EXAMINING CIRCUMSTANCES SURROUNDING THE 1981 FIRINGS OF AIR TRAFFIC CONTROLLERS AT THE CHICAGO AIR ROUTE TRAFFIC CONTROL CENTER

(100-35)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
INVESTIGATIONS AND OVERSIGHT

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

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EXAMINING CIRCUMSTANCES SURROUNDING THE 1981 FIRINGS OF AIR TRAFFIC CONTROLLERS AT THE CHICAGO AIR ROUTE TRAFFIC CONTROL CENTER

TUESDAY, MARCH 10, 1987

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:39 a.m., in room 2167, Rayburn House Office Building, Hon. James M. Oberstar (chairman of the subcommittee) presiding.

Mr. Oberstar. The Subcommittee on Investigations and Oversight will come to order.

Almost seven months ago, this subcommittee met in executive session to discuss allegations surrounding the 1981 firings of air traffic controllers at the Chicago Air Route Traffic Control Center.

The subcommittee, on a bipartisan basis, agreed that it was necessary to subpoena officials and records at the Aurora facility. On July 25, Congressman Gingrich, Congressman Moody and I traveled to Aurora, Illinois, and, at another hearing in executive session, received 17 boxes and two file cabinets of strike-related materials.

A thorough review of those documents, an examination of sworn testimony by FAA officials before the Merit Systems Protection Board, and subsequent staff interviews have revealed inconsistencies and discrepancies. These inconsistencies and discrepancies will be explored as the investigatory process continues over the next 2 days.

We are not here to question the policy or the firing of the controllers nationwide, nor are we here to re-try the individual cases of controllers who have been fired. What is on trial is the process as it existed in Chicago. Specifically, our purpose is to determine whether individual rights were compromised in the rush to fire controllers. Were documents altered or created for the sole purpose of sustaining dismissals of air traffic controllers?

We will also explore the accuracy of testimony by FAA officials before the Merit Systems Protection Board. Did those officials deliberately mislead the MSPB as to the origin of the documents and the extent of the alterations?

This subcommittee has a responsibility to find the answers to these questions. If the allegations of misconduct are true, it must never happen again. No matter how isolated, a serious miscarriage of justice—if these allegations are true—will have occurred, and Federal officials will have betrayed the very principles that are the foundation of our democracy.

The subcommittee cannot ignore allegations of injustice by dismissing them with the view that the end justifies the means. What we hope to accomplish after 2 days of hearings is an understanding of what actually took place when approximately 446 air traffic controllers were dismissed at the Chicago Air Route Traffic Control Center.

We want to find the truth as Faulkner once defined it: ". . . that long, clean, clear, simple, undeviable, unchallengeable straight and shining line, on one side of which black is black, and on the other, white is white."

The Chair recognizes the gentleman from Pennsylvania, Mr. Clinger.

Mr. CLINGER. Thank you very much, Mr. Chairman.

As you have indicated, the subcommittee is meeting today to begin its hearings on the firing of air traffic controllers from the FAA's Chicago Air Route Traffic Control Center following the PATCO walkout on August 3, 1981.

Specifically, the subcommittee will be examining the means by which personnel at the Chicago Center and the Great Lakes Region office prepared, reviewed, amended, and processed the documentary evidence used to support those firings in hearings before the Merit Systems Protection Board.

As you have outlined, Mr. Chairman, this investigation began in July of 1986, when the subcommittee became aware of allegations of fraud, misrepresentation, and falsification of those documents by FAA personnel. Acting on the reasonable belief that the seriousness of those charges warranted investigation, the subcommittee voted the issuance of a subpoena to command the production of certain employment records and documents stored at the Chicago Center.

As you have already indicated, on July 25, 1986, the subcommittee traveled to the Center, where, in executive session, the testimony of David Erickson, then Assistant Air Traffic Manager at the Center, was received and the subpoenaed documents taken into possession.

Since that time, the subcommittee staff has conducted an exhaustive analysis of those documents, reviewed pleadings, transcripts, and evidence files from proceedings before the Merit Systems Protection Board, and interviewed fired controllers' attorneys, former and current FAA officials, and officials of the MSPB in an attempt to find accurate responses to the allegations.

In some cases, answers have been found. In others, additional questions have been raised as seeming inconsistencies have been discovered among previous sworn testimony, documentary evidence in the subcommittee's possession, and off-the-record interviews. For the next two days, the subcommittee meets to examine the allegations, explore the inconsistencies, and provide the opportunity for the complete truth to be spread upon the record.

At this point, Mr. Chairman, I think I would just like to emphasize some of your comments to reemphasize what these hearings are not about. First, these hearings are not to be construed as a portrayal of events as we understand them to have existed throughout the FAA during the time of the PATCO strike. The subcommittee at this time reasonably believes that the actions and allegations surrounding the Chicago Center firings are a genuine aberration and not indicative of the way in which the agency and its facilities generally handled strike matters.

Second, these hearings are not for the purpose of re-trying the guilt or innocence of any controller or groups of controllers fired from the Chicago Center. That is neither appropriate nor within our power to do.

Third, the subcommittee's investigation has not been undertaken with an eye toward establishing any sort of justification for the rehiring of controllers who were fired following the 1981 PATCO walkout. Despite the strong feelings on both sides of that question, probably demonstrated in the extremes by the very members of this panel, the subcommittee is in unanimity that these hearings are not addressed to that issue.

We do meet, however, to examine in utmost seriousness whether there were instances of wrongdoing in the way in which Chicago Center and Great Lakes Region officials handled the controller firings. Today we hear from one side of the controversy—three attorneys who represented, and in some cases continue to represent, controllers who were removed. I would expect that the lawyers have polished their presentations as thoroughly as they would a brief being argued before an appellate court.

In many respects, I anticipate that the issues raised today will be those which the subcommittee will pursue with the witnesses tomorrow. Despite the hype and the hoopla which the testimony might elicit, I would caution those who might conclude otherwise not to prejudge or predetermine the outcome of these hearings.

This subcommittee, I am convinced, through your leadership, Mr. Chairman, will not be swayed by style or sensationalism, but by substance. That is our responsibility and one that I am sure we will carefully adhere to.

Thank you very much, Mr. Chairman.

Mr. Oberstar. Thank you, Mr. Clinger, for your very thoughtful comments, certainly in keeping with the very thorough and deliberate nature of the process of inquiry we have followed.

Does the gentleman from New York have an opening statement, opening comments?

Mr. Molinari. I do, Mr. Chairman.

Mr. Oberstar. May I first say, on behalf of the subcommittee and for the record, to make it clear that it was the diligent work of the gentleman from New York that first brought certain aspects, most serious aspects, of the allegations about this case to the Chair's attention; and it was his diligent efforts in pursuit of truth that, in large part, initiated the inquiry on which we continue today. I want to thank the gentleman for that effort.

Mr. Molinari. Mr. Chairman, I do have some comments to make. Since we embarked on this investigation, I have been terribly disturbed at some of the information that we have received. A lot of what has been said by the attorneys out there, by the controllers who charged they were wrongfully fired, has already been proven.

So we are kind of in a unique situation here in that, before the hearing begins, we have evidence in fact that there were alterations, forgeries, substitution of documents, and a whole host of other acts that are very, very questionable.

I think what disturbs me more than anything else, however, is the fact that, this morning, on arrival here, I was handed a letter authored by Admiral Engen wherein he expresses his concern about the fact that we are planning to hold these hearings, and said he is "deeply troubled," and I am quoting, "by the fact the subcommittee intends to explore matters which not only occurred 5½ years ago but which have been litigated fully before the Merit Systems Protection Board."

Then he says the allegations are not new, the amendments did not form the basis for the removal decisions of the affected employees. And then he says—and I think this is very significant—"I want to stress that we are the first to acknowledge that certain aspects of the recordkeeping practices associated with the processing of removal cases at the Chicago Center were inadequate and not in keeping with what we expected."

And then, finally, he says, "In closing, I would reemphasize to the subcommittee that I am not satisfied with the way some of the records were kept or changed at the Chicago Center." And then he makes one statement, "There is absolutely no evidence that the deficiencies in that recordkeeping process resulted in any individual being terminated who came to work." But what he does not say is that those very same deficiencies did result in some of those who were wrongfully fired from being reinstated back to work.

I do not think Admiral Engen understands the difference between the branches of government. No, we are not here to re-try the case, Mr. Chairman; we are here to find out what really happened at Chicago Center, why it happened, and, as you said in your closing remarks, to ensure that it never happens again.

I hope that we have a good hearing these couple of days and we can pinpoint what happened. And if in fact there is wrongdoing out there and we find individuals and are able to identify individuals who were guilty of wrongdoing, then I think punitive action should be taken.

Thank you, Mr. Chairman.

Mr. CLINGER. Mr. Chairman, I would ask unanimous consent that the statement by our colleague, Mrs. Bentley, be admitted in full into the record at this point in the hearing this morning.

Mr. OBERSTAR. Without objection, the statement will occur at this point in the record.

[Mrs. Bentley's statement follows:]

REPRESENTATIVE HELEN DELICH BENTLEY'S OPENING STATEMENT BEFORE THE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

I commend the leadership of the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transporation for calling this hearing together to review the firing of air traffic controllers at the Chicago Air Route Control Center. Chairman Oberstar and Mr. Clinger, I commend your foresight in recognizing the need for Congress to hold hearings on this important issue of aviation regulation.

As the field of aviation becomes increasingly important as a means of travel, the demand for air safety becomes a top priority for Congress. We will continue to examine aviation regulations to ensure air safety.

It was in the beginning of this century, 1926, that the Federal Government began its oversight of aviation. In 1938, Congress established the Civil Aeronautics Authority (CAA), with responsibility for both air safety and economic regulation. Following a mid-air collision of two airliners over the Grand Canyon, Congress passed the Federal Aviation Act of 1958 with broader responsibility for civil aviation safety regulation. The FAA has been a part of the U.S. Department of Transportation since 1967.

America does have the history of having the world's best transportation systems in the world. We are here today to examine FAA regulations and procedure so that future FAA procedures will be implemented effectively.

Federal agencies such as the National Transportation Safety Board investigates transportation systems. NTSB investigates all air crashes and recommends ways to avoid recurrences. Secretary Elizabeth Dole has briefed President Reagan on the status of aviation safety, and later announced that "to make the safest system in the world safer," the FAA would add 1,000 controllers and 500 safety inspectors in the next two years.

On a per-passenger-mile basis, flying remains far safer than driving and on par with taking a bus or riding a train. However, our purpose here today is not to promote any one form of legislation designed to address the need of additional air traffic controllers but to review the action taken by the FAA officials of the Chicago Air Route Traffic Control Center in response to the Merit Systems Protection Board (MSPB).

Chairman Oberstar, Mr. Clinger and members of the subcommittee, I look forward to working with this committee to reach a better understanding of methods for this committee to implement in the future to make our aviation legislation more workable.

Mr. **Oberstar**. Our first and only panel of witnesses today are Mr. Gary Klein, Mr. Richard J. Leighton, Mr. Phillip S. Wood, and Mr. Richard J. Johnson, all attorneys. Would you rise, gentlemen, and raise your right hand?

Do you solemnly swear that the testimony you will give before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Klein**. I do.

Mr. **Leighton**. I do.

Mr. **Wood**. I do.

Mr. **Johnson**. I do.

Mr. **Oberstar**. Thank you.

You have prepared a very detailed statement as well as a more brief summary. We would prefer that you go through the detailed statement. Ordinarily, committees like to have a summary, but since there is so much of substance in your lengthier statement, it is the consensus of committee members that we would like to have that read. You may wish to divide that reading up, since it takes a while to do so, but we would like you to proceed on that basis and incorporate in the longer statement the summary that you prepared.

TESTIMONY OF GARY ETHAN KLEIN, SMITH, KLEIN & PARTNERS, INC.; RICHARD J. LEIGHTON, LEIGHTON & REGNERY; PHILLIP S. WOOD AND RICHARD JOHNSON, PASKY & WOOD

Mr. **Klein**. Thank you, Mr. Chairman.

This is a joint statement of Gary Ethan Klein, an attorney in Washington, D.C.; Richard Leighton of the law firm of Leighton & Regnery, Washington, D.C.; and Phillip S. Wood and Richard Johnson of the firm of Pasky & Wood, Aurora, Illinois.

Together, we represent a total of 168 former air traffic control specialists from the Chicago Air Route Traffic Control Center who were fired by the FAA in August of 1981.

Joining us as technical advisors are Mr. Len DeHainut, Mr. Patrick West, and Mr. Roy Bozych, who are former controllers at the Chicago Center.

At the outset, we would like to summarize the reasons we believe the Chicago Center cases should shock the conscience.

First, these controllers have been barred from their profession for 5-1/2 years, and yet to this very day not one of them has been given the identity of the FAA official who accused them of participation in the strike or of being absent without leave during the strike.

Over the course of two MSPB hearings, one in 1982 and the other in 1984, during months of investigation, including the taking of depositions of approximately 25 FAA supervisors, managers, and others, the FAA did not identify a single witness who even claimed to have personal knowledge of the facts necessary to support the charges against any of these controllers.

Considering the fact that various provisions of the Civil Service Reform Act require the FAA to prove its charges against each of these controllers by a preponderance of the evidence, it is difficult to imagine how the Chicago termination actions were sustained in the total absence of testimony from witnesses having personal knowledge of the facts.

We have discovered that the documents used to fire the controllers are the product of what we allege may be the largest and most systematic evidence alteration scheme in the history of American jurisprudence. The perpetrators of that scheme and its coverup are government officials.

The apparent object of the scheme was to convince the MSPB that the Chicago Center had maintained, in the ordinary course of its business, time and attendance records which demonstrate that: a particular controller was scheduled for duty on a date he was charged with withholding his services; that his supervisor, who had personal knowledge of the controller's schedule, including knowledge of who was excused from duty or on leave, had noted the absence and recorded the controller as AWOL; and, that the recorded AWOL was made contemporaneously with the date shown on the document.

Copies of these fabricated business records were ultimately assembled, officially certified as true and accurate by the FAA's Regional Director of Employee and Labor Relations, and submitted to the MSPB as evidence. These documents formed the sole evidence introduced against these controllers.

At the first MSPB hearing on these cases in November of 1982, the Chicago Center chief, George Gunter, testified under oath that copies of the time-and-attendance records of the Center which had been submitted as evidence represented records compiled in the ordinary course of business.

While testifying, Gunter was unaware of the fact that the controllers had obtained copies of some of the records as they appeared at a prior stage of the alteration process. Just prior to being confronted with this second version of records, Gunter testified a second time that the documents submitted in evidence represented the records which the Chicago Center kept in the regular course of business. Gunter specifically denied that he or anyone else had altered or changed these records.

The Chicago Center evaluations officer, Mr. Robert Miller, the man who would later be identified as the "general" in charge of the "war room"—which was the FAA's term—in which massive evidence of tampering activity took place, was present at the agency's counsel table as the FAA's technical advisor when Gunter made these sworn representations concerning this agency evidence.

Even after Gunter was initially confronted with documents which demonstrated that the Chicago Center records had been altered, he persisted in being less than candid about the evidence-tampering scheme.

For example, Gunter initially attributed the change in the records to some sort of "updating" process which was performed by the personnel department under the direction of one Mr. Richard Pender. The agency was asked to produce the personnel specialists who had altered the records.

In explaining the agency's failure to introduce testimony from personnel specialists, the FAA attorney subsequently advised the MSPB presiding official, "I have tried to find personnel specialists who would be familiar. Unfortunately, because there were several of them doing it, they did the work and can't really explain why they did it."

The Chicago Center, in August 1981, had two employees in the personnel department. Mr. Pender was personnel specialist, and his assistant was Constance Guglielmi.

In July of 1984, both Mr. Pender and Ms. Guglielmi were deposed by controllers' counsel. Both of them swore they had nothing to do with the alteration of the records.

Gunter made several other conflicting statements about the records at the first hearing. At one point he suggested that the differing versions of the record represented simple "mistakes." At another point, he suggested that the Center had maintained records which had to be "revised" within a few days after the dates shown. Then, when confronted with evidence that the records were changed after the controllers had made oral reply to the charges, Gunter stated that the Chicago Center had not even maintained the records originally prior to that time.

Most significantly, Gunter never disclosed his knowledge that Miller was in charge of the alteration scheme and never identified persons he knew were involved with Mr. Miller's work. The first MSPB hearing ended with the Chicago Center's altered records, which were the sole evidence introduced against controllers, in an unexplained state.

Incredibly, the MSPB's presiding official sustained the removal actions on the basis of the "contested evidence." The rationale for this result may become a classic. After acknowledging that the Chicago Center's altered documents comprised the sole evidence against the controllers, the presiding official wrote, and I quote:

> Mr. Gunter was unable to explain the "discrepancies" between these two sets of sign-in logs other than to make a vague statement that the file copy logs were "updated," and through a series of events at the hearing—no other evidence has been

> made a matter of record concerning when [if ever] the file sign-in logs were changed, who changed them, for what purpose they were changed, and which sign-in logs are more accurate.

The presiding official had, throughout the hearing, warned the agency attorney, both on and off the record, that the agency had better introduce testimony to explain the alteration of its evidence. The FAA refused to do so. In a subsequent decision, he found the lack of evidence on this point as a factor which added to the probative value of the records:

> In view of the lack of evidence which would show that some of the file copy sign-in logs were "doctored" for a specific purpose, I am unable to conclude that they were altered by the agency in an improper attempt to influence the outcome of these proceedings, and I find that they cannot be totally disregarded as probative evidence.

Besides, the presiding official stated, finding for the controllers would, "be tantamount to pretending that a strike did not exist at the Chicago Center." And this quote was made based on the evidence that was not presented by the FAA.

The MSPB initial decision was appealed to the three-member MSPB panel in Washington, DC. The full Board reversed the decision but not the removal actions. After noting that Gunter had contradicted himself, that the altered documents were insufficient, and that the FAA had failed to explain the alterations after being given numerous opportunities to do so, the Board remanded the case for a second hearing on the issue of the altered documents, thereby giving the FAA a second opportunity to explain their records.

In preparation for the remand hearing, the FAA submitted pleadings and affidavits which demonstrated a remarkable shift in their initial position.

For example, although the Chicago Center chief, George Gunter, was the only witness put on the stand at the first hearing to "authenticate" altered documents as business records, the FAA took the position on remand that Gunter had so little knowledge of these records and the alterations made to them that it did not even intend to call him as a witness at the second hearing.

The FAA submitted an affidavit from Miller which claimed that Miller was responsible for the alteration process. The FAA pleadings specifically represented that Gunter had no knowledge of the alterations and that only Miller could explain them. The Board accepted these representations, and Miller testified at the second hearing, whereas Gunter did not.

Two years later, Miller would submit another affidavit in another case which asserted that Gunter not only knew about the alteration of the records; he specifically directed Miller to take charge of it and told him how he wanted it done.

Another affidavit, signed by the former deputy chief of the Chicago Center, Henry French, asserted that French personally observed Gunter tell Miller to alter these records. French served as the FAA's technical advisor in the remand hearing.

In preparation for the remand hearing, the controllers moved for production of all original and non-identical copies of the relevant watch schedules, sign-in logs, and time-and-attendance reports. The agency vigorously resisted this motion.

As to the time-and-attendance records, for example, the agency claimed that the original documents were in Kansas City and that it would be burdensome to require the agency to produce them. After the MSPB ordered the agency to produce them, the agency claimed that the originals had been destroyed.

Similarly, the controllers moved for the production of Chicago Center's "swap books" and "spot leave binders," which were support documents necessary to make sense of the watch schedule. The agency failed to produce these records, stating that they were not required to be maintained, and besides, they "did not exist."

At the hearing, two FAA supervisors confirmed that the documents did exist and that they were necessary to determine the schedule of the controllers. Miller admitted at the subsequent hearing that these records were also destroyed.

The agency was also ordered to produce both "originals" and non-identical copies of the watch schedules and sign-in logs. The "originals" proved to be yet another version when compared with the two "originals" which surfaced at the first hearing.

Moreover, there was nothing original about these records, as they contained hundreds of alterations. Some of the "originals," represented evidence which was completely fabricated and backdated to make it appear as if it were original.

The number of "non-identical" copies of these supposedly identical records is truly startling. There were supposed to be 175 pages of watch schedules. The agency produced 22,811 pages of non-identical copies of the original 175. For what were supposed to be a total of 1,239 sign-in logs, the agency produced a total of 20,657 non-identical copies of what should have been 1,239.

Although many of the differences in these non-identical copies were insignificant, there were numerous instances of material differences which resulted in there being as many as six materially differing versions of what was supposed to be a single business record. Of even greater importance, the agency never produced, in any form, originals or photocopies of any record which would have shown what the evidence looked like prior to the 4-month alteration process.

Depositions were taken of 25 supervisors prior to the hearing. The supervisors uniformly expressed surprise at what had happened to these records. They universally testified that they had not made the key "AWOL" entries on the logs for their areas.

The supervisors universally disclaimed any knowledge of the identity of the individuals who altered the records. They all said that they were not consulted about alterations, even when the alterations involved the obliteration of original information and annual leave status and the substitution of AWOL status after the controllers were fired.

The supervisors confirmed that, in the ordinary course of business at Chicago Center, they were the ones who made the determination of whether an employee in their respective area was AWOL and that they were the ones who recorded "AWOL" on the logs. However, they repeatedly denied any knowledge of the AWOL entries on the agency's evidence.

Mr. Leighton?

Mr. LEIGHTON. We have decided to share this burden. We did not know we were going to have to read the entire statement, so I will pick it up from here if there is no objection.

Before I do so, I would like to emphasize that we are not here to re-argue the merits of any case, past or pending, and we understand from your opening statements that you understand this full well. I would just like to share our intent with you before proceeding. It is very important for us to get that message across.

We are here to help you determine whether something happened that was contrary to the intent of Congress when it established the procedures which were supposed to have been followed in these proceedings, and if you so determine, we hope that what you do as a result of this, and what we do today, will help in preventing any improprieties from happening again.

So, with that in mind, I would like to continue with the reading of the statement. This part of the statement applies to what happened when the air traffic controllers were fired and then appealed their firings to the MSPB, the Merit Systems Protection Board.

As has already been stated, they went to the Board, were assigned to a presiding official, which is an administrative hearing officer. The presiding official ruled against them. It went back to the Board on appeal, and then the full Board, which is a three-member board, decided to remand it for further hearings at the trial, the administrative trial level.

Continuing now on page 9 of the statement: The sole purpose of the full Board's remand order to the presiding official, who acts just like the trial judge, was to determine the circumstances of the creation of the documents and to adjudicate the probative value of this, "evidence" under the Board's hearsay test. It is called a Borninkhof test, after a case that rules on this.

This test basically asks four things: Who is the accuser—legally, who is the declarant—on the relevant entries? Did each declarant or accuser sign and swear to the truth of the entries? Did the declarant have personal knowledge of the truth of the entry? And when were the entries made?

The FAA never answered any of these essential questions at the remand hearing. The so-called makers of the key AWOL entries were never identified. Without identification of these FAA officials, the Board's hearsay analysis was impossible. The entire purpose of the remand was thwarted by FAA's failure to identify who made the critical entries on the so-called evidence.

On the other hand, the hearing did turn up a few things. It did apparently demonstrate conclusively who were not the accusers or who were not the declarants. The area supervisors—the only ones having the requisite personal knowledge of their subordinates' schedules and leave status and a variety of other things that go to that status—these supervisors universally disclaimed making the key entries, as they had in the depositions, and no FAA witness challenged their testimony.

This related to the official evidentiary, "adverse action" files that were supposed to be kept by Federal agencies and transmitted to the MSPB if an employee challenges his or her termination pursuant to statute. Basically, what happens, pursuant to the Civil Service Reform Act of 1978, is that, when an agency wants to fire somebody, they have to give that person an opportunity to reply orally and in writing to the charges, and in doing that they provide that employee the so-called evidence or "material relied upon."

The employee comes in, either in writing, orally, or both, looks at the material relied upon as backup for the charges, and responds thereto, and then the deciding agency official decides whether or not to fire him or her.

If that firing is appealed to the MSPB, this adverse action file, which includes the material relied upon to fire the employee and to propose the firing, is certified up to the MSPB as evidence of why the agency decided, notwithstanding the arguments of the employee, to fire the employee. It is supposed to consist of all of the material relied upon, and if there are oral statements made by the deciding official, those are supposed to be transcribed or summarized and put into the adverse action file.

If the employee's response to that material is considered inadequate, this response is summarized and is supposed to be put into the adverse action file as well and sent up to the MSPB.

During cross-examination of "War Room General" Miller, it was uncovered that, after controllers had responded to the charges that were in the original material relied upon to propose their termination, this material relied upon was altered, and in some cases completely manufactured where none existed before, and sent up to the MSPB as evidence of why the employee was fired. And of course, from there it would have to be used as trial evidence.

None of the controllers knew this. They responded to one set of charges and one set of material below in the informal pre-termination hearing, and when they appealed it, they had another set to contend with.

After this substitution process was uncovered, the agency was requested in open hearing to produce the original evidence which had been removed from the MSPB files so that everyone could look at what was originally suggested as material relied upon to fire these controllers. Without hesitation, when this happened in open court or open hearing, the FAA attorney replied that the agency no longer had the original evidence. It had been destroyed.

Having established that the original facility records, the "material relied upon" by the FAA to fire the controllers, was destroyed—and this is supposed to be the critical evidence at the trial—the controllers moved for immediate dismissal of the agency's case; FAA had no evidence.

The MSPB presiding official deferred his ruling, remarking that he would carefully consider it when he made his decision after hearing all of the new evidence on the remand. The subsequent decision did not even mention the motion of the controllers, or the agency's admission in this regard. It was just completely ignored.

Because the FAA successfully achieved its purpose—i.e., the alteration process made it appear that all of the entries and all of the documents in evidence were actual operational documents; that is, those used by supervisors at the time of the strike—even the FAA witnesses could not distinguish between a genuine operational entry from a subsequent fake.

Miller, the FAA official who supposedly headed the evidence-tampering, was challenged several times to distinguish the original entries from the altered ones, and he repeatedly admitted that even he could not now tell the difference. Ultimately, he was constrained to admit, in what became one of the most famous quotes during the hearing, and I quote it now: "No one, with the possible exception of God, could look at these evidence files and tell whether or not they are accurate." That is the evidence on which these controllers were, "convicted." I guess the only possibility is that someone thought they were God.

Although the remand hearing evidence failed to answer any of the questions raised by the full Board remand order, the controllers uncovered much information relating to who were the participants in the evidence-tampering process, the location in the Chicago Center where this activity took place, and the time frame involved.

The "war room" in which evidence-tampering activity was accomplished in the Center was detached from the operational areas of the Center, and this activity was intentionally kept secret from working controllers, supervisors, and even area managers.

One of the participants in this activity testified that Chicago Center Chief Gunter indicated to him that, "everything here [in the war room] is secret; keep it under your hat." All of the facility supervisors who testified—and these are the operational people, by the way—all of these operational people, both at deposition and at the hearing, confirmed that they had never been advised about the activity in the war room.

Many of the war room enlistees shared common circumstances. None of them was involved in either the scheduling of the controllers or in maintaining the controllers' time-and-attendance records at any time prior to their war room activity. Most of them were not even FAA employees when the recorded events occurred.

None of them had any basis for personal knowledge concerning the truth of the alleged operational entries that they were making. They did not consult with the supervisors who did have personal knowledge regarding the entries. Their activity was limited to creating material that was to be submitted to MSPB as evidence against the fired controllers. And they included, on a temporary basis, even Miller's wife and at least one social friend of his.

The time frame of the war room activity ran from mid-August 1981 until the first or second week in December.

The record was unclear as to the extent of the evidence tampering. One war room enlistee, who started making altered entries two months after the dates shown on the documents, said he made changes to all three types of timekeeping records: the watch schedules, which are the original schedules by which controllers determine what watch they are working, when they have to go in, and for what period of time; the sign-in logs, which are like the sign-in logs you have at some buildings—they are there when you come in and you sign your initials next to a printed rendition of your name—and the time-and-attendance reports, which are the reports compiled from the watch schedules and the sign-in logs later to determine how you get paid for the number of days or hours that you have worked.

This enlistee that I am talking about estimated that he made about 300 changes to the records but added that—and he was vague on this—he could have made as many as 3,000.

In some cases, the tampering activity involved the complete manufacture of a document, back-dated and made to appear like an original record, such as a sign-in log that was supposed to have been there on one of the days of the strike, and people were supposed to have come in and signed it—completely manufactured.

One enlistee testified that, for a two- to three-week period in September of 1981, he was working in a separate room of the Chicago Center. He described taking "blank" sign-in logs from a stack, placing controllers' names and "AWOL" on them, and back-dating them to make it appear to be an operational record made the month before.

He testified that Miller directed him to do it. Miller testified that he did not direct this enlistee to fabricate these logs. Miller swore he did not even know that it had been done. When confronted with Miller's denial, the enlistee insisted Miller told him to do it. In fact, he said, "I swear to God Miller told me to do it." He was under oath, anyway. And he said he personally turned the manufactured evidence over to Miller.

Another war room enlistee testified that Miller directed him to prepare a "re-creation," a completely fabricated watch schedule for data system specialist personnel. He said that he complied and, as a result, completely bogus documents were submitted as evidence. Miller denied that he directed this person to fabricate these records.

There was also significant evidence that someone attempted to perpetrate a fraud on the MSPB by using Miller's signature stamp on the reverse side of the sign-in logs in order to fake a certification.

As we have already noted, the full Board's remand order had directed that the records be subjected to the MSPB's hearsay analysis under the so-called Borninkhof doctrine. The second and third parts of that test look to whether the document is signed, certified, or otherwise sworn to.

It appears that someone believed that he could succeed in this endeavor because the original FAA evidence submitted to the MSPB in 1981 involved only photocopies or xerox copies of the "T-and-A" side of the document. What happens is that, on this document, there is a time-and-attendance side and then, on the reverse of it, there is a certification.

But the scheme failed, because as you could tell from some of the original documents that were filed or the copies of the original documents in the files, in looking at just the T-and-A side, you could see just the T-and-A side. You could see everything on there.

After the remand came down and said we have to submit this to a Borninkhof analysis, which includes certification, some of these documents, a large number of these documents in some of these files, now had—I withdraw that. A large number of these documents were produced with both sides as part of our discovery. We looked at them and, lo and behold, on the back was "General" Miller's—"General" in quotes—Mr. Miller's stamp, and these were supposedly the original documents.

We turn it over and the stamp bleeds through, so you see it on the front. You compare that with what is in the files: no bleed-through. Yet it is their sworn testimony that this front with the bleed-through was the original from which the other was copied. You can xerox it as many times as you want; the bleed-through always appeared on this version that occurred after the remand said it would be nice to have a certification.

Mr. OBERSTAR. And the remand was 1984?

Mr. LEIGHTON. Yes, in 1984. So, sometime after that, it is, I think, logical to infer that somebody took a stamp and went through all of these. It probably would have been very difficult to sign them individually during that period of time. Somebody was extraordinarily efficient, except they did not turn the documents over, that the ink bled through.

Miller admitted that it was his personal stamp that was used, but claimed that the war room enlistees were the ones who applied his signature stamp to the records. All of those identified by Miller as having done this—including his own wife—refused to agree with him. All of them denied using the signature stamp on any record, and it was very amusing to see this from a credibility point of view: "Not me, man, no. I didn't do that." And Miller's wife said the stamp was kept at home, I think she said in a drawer someplace at home.

When confronted with these contradictions, Miller said that he was surprised at the testimony of the other war room participants and said some very vague statement that he didn't intentionally lie, and we couldn't move him from that. What that means, I leave to your imagination.

Following this testimony—and it was quite dramatic testimony—at the end of the fourth day of the remand hearing, the presiding official, who was obviously disturbed, went to the cafeteria where the attorneys were conferring with the FAA attorneys about some possible stipulations relating to the hearing, and in the presence of everyone—this is highly unusual—the presiding official, the MSPB presiding official, told the FAA attorneys that he was extremely disturbed at this turn of events, and then he suggested that they damn well better settle this case and settle it quickly.

The hearing was immediately adjourned. We went back upstairs and, said a few things on the record. At the FAA's request, we did not put in the record that we were going to adjourn for settlement, and they said they would have to obtain authority from Washington to do anything on these lines.

We took a recess. On the third day, they came back and they advised us that there would be no negotiation. The hearing was resumed, and when it was resumed, the controllers' attorneys asked, in open hearing, whether the FAA was going to produce a single witness who would admit to placing the stamped signature on this evidence. The FAA attorney replied, "I have no intention of producing anybody to that effect."

After that, or shortly before that, it was put on the record that a settlement attempt had been made, and, surprisingly, the presiding official allowed that to be put on the record. Usually, that is not allowed.

As promised, the FAA made no attempt whatever to explain this false certification on the documents that were supposed to be evidence, and the subsequent MSPB decisions totally ignored this evidence, although obviously, we made a big point of it in all of our pleadings.

Another significant issue concerned the original certification of the Chicago Center's altered records by the FAA's Regional Director of Employee and Labor Relations, Richard Shewfelt. Mr. Shewfelt had incorrectly certified to the MSPB, in November of 1981, that the copies of the Chicago Center records submitted as evidence to the MSPB were "true copies" of the "material relied upon" by the agency in proposing to and in actually firing these controllers.

By the agency's own admissions and testimony, the "material relied upon" was sent to the region in Shewfelt's custody—in fact, he testified that it was in his actual office—in the second week of September 1981.

It was also demonstrated beyond any doubt that the Chicago Center's altered documents--the products of the war room I am talking about here—were substituted for the "material relied upon" as late as October, November, and December of 1981, while they were in Mr. Shewfelt's personal office, and long after he took original custody of evidence. There is a lot of testimony in the record that he knew what taking custody of evidence meant in the legal sense, as did Miller.

Finally, the agency's own attorney conceded that the documents representing the "material relied upon" were actually destroyed, and what Shewfelt got was copies.

In spite of all of the testimony and evidence concerning what happened to the records in Shewfelt's custody, Shewfelt steadfastly insisted that he had no knowledge whatsoever that it was going on. I mean, this was not in the agency's custody, not in the operational people's custody; it was in his personal custody, and it was his statutory responsibility to take custody.

He said he was unaware of the evidence tampering, knew nothing about the war room activity or the substitution of records in his own office. Hundreds of alterations were made, if not thousands, at that time. He went so far as to say that, if it happened, it was improper, and if he had known about it, he never would have certified these records to the MSPB as evidence.

The MSPB presiding official issued his decision to affirm the removal actions on December 17, 1984. The decision did not refer to the record transcript on the altered document issue in a single instance. It is a very slim opinion, as you have seen.

And, by the way, not in this record is the fact that the decision was made under very questionable circumstances. While this presiding official was considering the case, he was transferred to Washington at the MSPB in what was then called a secretary's position—I think it is now called a legal clerk—working directly for the chairman, I believe, on that. This was while he supposedly was writing one of the most critical MSPB decisions and perhaps the most critical air traffic controller decision at that time, and he came out with a decision that is highly unusual.

On July 5, 1985, the full Board denied the controllers' petition for review of the unusual presiding official remand decision.

That completes a very quick capsulization of many years of what we think went on. I believe that we can substantiate everything that we have said by giving you actual documents and citing to the record, and we would be happy to do that now or later if you have any questions about that.

That completes our full statement, Mr. Chairman.

Mr. **Oberstar**. Thank you very much. We appreciate your going through the entire statement and realize that it is a laborious effort to read that much. However, by the same token, you took a great deal of time and effort to prepare it, and it is good to have it delivered, especially for the benefit of members who want to follow in detail all of these issues.

At this time, I think it is appropriate and I would ask unanimous consent to include in the record the letter the subcommittee has received from FAA Administrator Don Engen with reference to the hearing today and the hearing tomorrow. That letter should be included at this point. It was referred to at the outset by the gentleman from New York.

[The letter referred to follows:]

U.S. Department of Transportation,
Federal Aviation Administration,
Washington, DC, March 9, 1987.

Hon. James L. Oberstar,
Chairman, Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
House of Representatives, Washington, DC.

Dear Mr. Chairman: I am writing to express my concern about the Subcommittee's hearing planned for March 10 and 11. I understand that this hearing is intended to focus on allegations that the Federal Aviation Administration altered records at its Chicago Center in order to support the termination of striking controllers in August 1981.

I am deeply troubled by the fact that the Subcommittee intends to explore matters which not only occurred 5½ years ago, but which have been litigated fully before the Merit Systems Protection Board. The allegation that records were falsified to substantiate the firing of strikers at the Chicago Center is not new. To the contrary, as the Subcommittee is aware, that specific issue was addressed in a hearing in 1984 before a presiding official of the MSPB, who, in short, concluded that, while records had been amended at the Center, these amendments did not form the basis for the removal decisions of the affected controllers. Subsequently, on appeal to the full MSPB, the decision of the presiding official was upheld. That same issue is now pending before the U.S. Court of Appeals for the Federal Circuit.

I think it is also signficant to add that the private attorneys, who will appear before the Subcommittee on March 10, and who were unsuccessful in their appeals before the MSPB, sought to have sanctions imposed on the agency by the MSPB for its actions in amending records at the Chicago Center. The MSPB rejected that request, effectively finding that the FAA had not evidenced any improper motives in the record changes that were made during the processing of the removal cases. Moreover, there was a similar attempt to have the Department of Justice intervene in this matter against the agency, but the Department of Justice did not find cause to do so. Consequently, two key findings have emerged through the prior inquiries into this matter: first, the record changes made by the FAA did not adversely affect the rights of the strikers who were terminated nor form the basis for their termination; and, second, the changes made were not made with any improper intent.

I want to stress that we are the first to acknowledge that certain aspects of the recordkeeping practices associated with the processing of removal cases at the Chicago Center were inadequate and not in keeping with what we expected. Clearly, we would have preferred that greater attention had been focused on maintaining current and correctly annotated sign-in logs; we also do not believe that records should subsequently have been changed by our personnel to reflect an individual's absence from work. In that regard, I can understand the nature of the Subcommittee's concern. Nevertheless, there is absolutely no evidence that the deficiencies in that recordkeeping process resulted in any individual being terminated who came to work. None of the present appellants have testified that they actually came to work during the strike. That fact, I am sure, can be confirmed by the appellants' attorneys when they appear before you. Furthermore, as I noted, the removals did not hinge on any amended records; the MSPB found that what was signficant in terms of sustaining a removal was the absence of a controller's signature on the sign-in long rather than any changes which may have been made to the log by FAA personnel at a later date.

In closing, I would reemphasize to the Subcommittee that I am not satisfied with the way some of the records were kept or changed at the Chicago Center. But, I would also remind the Subcommittee that the PATCO strike imposed an unbelievable burden on the agency in continuing to operate the air traffic control system. Clearly, preserving the safety of the air traffic system had to be our highest priority when the strike occurred, and the record shows that the personnel of the Chicago Center fully met that challenge and obligation. We also need to recall that the ancillary task of preparing and processing hundreds of striker termination cases, during an extremely compressed timeframe, imposed an additional burden on system personnel, and that, while we may not necessarily excuse mistakes that were made, it is important to understand the context in which they occurred.

Sincerely,

DONALD D. ENGEN, *Administrator.*

Mr. **OBERSTAR**. Having entered that in the record, and copies made available for members, we may want to and shall refer to statements made in that letter in the course of our inquiry.

We appreciate your willingness to provide additional documentation. That may be necessary and may be useful as we pursue this hearing, even after tomorrow's activity.

There are many crucial points that you have raised and which we want to pursue at length and in depth. In order to give all members an adequate opportunity to question, we will have several or as many rounds of questioning as necessary. We will attempt to confine questioning to a 10-minute period for each member, recognizing that if some matter develops that requires a longer answer, we want to pursue that line of questioning. But I do want to caution members and the panel to keep their questions brief and answers to the point so that all members can participate in the hearing and we can get as full a record as is possible.

The essence of this issue is changing of records, which the panel has characterized in its more abbreviated testimony, and I quote, as "what we allege may be largest and most systematic evidence-alteration scheme in the history of American jurisprudence." At another point, the summary of our panel says that this is an "evidence-manufacturing operation."

Administrator Engen takes a different viewpoint. In his letter referred to a moment ago, he says, ". . . first, the record changes made by the FAA did not adversely affect the rights of the strikers who were terminated nor form the basis for their termination."

"Second, the changes"—he earlier admits that changes were made—"the changes made were not made with any improper intent."

Later on, the administrator refers to motive, saying there was no improper motive. The fact is, having admitted change of records, legally, there was intent, therefore, to change. Changes therefore were willful—that is, the FAA officials making such changes meant to change those records— and the motive behind the changes should then be legally irrelevant.

I would like to get your comment on this aspect, which I think goes to the heart of the entire issue.

Mr. WOOD. My comment is, sir, if it was with the best of intentions that they changed the records, I question why they went before the Merit Systems Protection Board and lied about the character of the evidence. They lied directly about the alterations.

At the first hearing, there was no question that they attempted to pass these off as business records made in the ordinary course of business. Mr. Klein, who was the attorney at the original hearing here, asked Mr. Gunter, who was the authenticating witness, directly: "Did you or anyone else at the Chicago Center change these records?" And his answer was, unequivocally, "No." It wasn't until he was confronted with the evidence that the records were altered that he started to give answers, "Yes, they were altered," and then he gave about five different versions.

Now, if their intentions were pure, why didn't they tell the truth?

Mr. KLEIN. My response to your comment, Mr. Chairman, is that you are exactly correct that the motive of the agency is completely irrelevant although is quite clear here, and that whether or not there was an improper intent is also probably irrelevant. The fact of the matter is that the activity was undertaken.

Admiral Engen's remark that the evidence that was altered is not the basis for the firing, I think, is factually incorrect. In point of fact, the documents that we are looking at today were the sole basis upon which the individuals were fired, and therefore, his initial statement that the discrepancies and alterations did not adversely affect the rights of the controllers is also incorrect.

I would suggest that the great importance of this hearing is that we are scrutinizing the substantive and procedural due process rights of the controllers and, by analogy, the citizenry as a whole. In this country, we as citizens have the right to have evidence against us be real and be confronted by those that are accusing us.

In this case, what went on makes the actions or alleged actions of the controllers, in my opinion, insignificant. The agency has totally trampled on the substantive constitutional rights of the people who are accused, and that is a tremendously dangerous undertaking and makes this committee's work so important, in my opinion, and I personally appreciate it.

Mr. LEIGHTON. Briefly, perhaps the admiral will have his mind changed as a result of this investigation, and if so, it will be interesting to see what he says when he sees all of the evidence.

I agree that it is irrelevant in terms of what their original intent was. What we have here is something that I believe is a demonstrably untrustworthy process which produced demonstrably unreliable evidence. If evidence is unreliable and it is the only thing that is proffered against somebody in a termination case, that person should win. It is as simple as that, intent aside.

Mr. OBERSTAR. Thank you.

The administrator's letter goes on to say:

> The removals did not hinge on any amended records. The MSPB found what was significant in terms of sustaining a removal was the absence of a controller's signature on the sign-in log rather than any changes which may have been made to the log by FAA personnel at a later date.

I would like your response to that.

Mr. **Wood**. To that, I would respond that the altered documents formed the sole evidence against the Chicago Center controllers, the only evidence. So it was more than substantive; it was the whole case.

I think that is why we made the rather grandiose statement that this perhaps is the most ambitious evidence-tampering scheme in the history of jurisprudence. We have researched this thoroughly, and we have never found a case where so many people were involved and so many documents were altered systematically.

This was their entire case, and the result of that entire case was that even the persons involved in the process arrived at a time when they could not distinguish their own fake entries from the originals. They completely spoiled their own case.

I think that nothing could be more relevant to the terminations of these controllers than to look at what case was presented against them, and if the entire case was spoiled with this process, then I think it is a very substantive and real incursion on their rights.

Mr. **Oberstar**. Further, what is the significance of the presence or absence of a controller's signature on the sign-in log? And, as a corollary to that, explain as best you can the circumstances under which the ability of a controller to sign in on that log was affected by the conditions occurring on and after August 3, 1981.

Mr. **Wood**. Well, first of all, most of the controllers were given a very short time frame under the Presidential deadline within which to report to work, so, as a consequence, you could look at the MSPB files and see 14 days of records which show "AWOL," when in fact they were barred from the facility after the first day. I mean, that was a preposterous thing on its face. The Chicago Center very strictly implemented the President's deadline.

So the question of whether they were or were not on strike was a question which addressed a very short time frame; that is, usually August 5, 1981. At the Chicago Center—the public is not commonly aware of this—the Chicago Center chief locked and chained the gate at 9:30 a.m. on August 5, one-half hour before the Presidential deadline.

Now, I am not going to get into that because we are talking about altered documents, but all I am trying to stress is that there is a very short time frame within which innocence or guilt is determined, usually a one-day period.

So the documents became very important. The documents as to who was scheduled on August 5 at what time determined innocence or guilt in every case. What turned out to be the agency's only case, the documents themselves, were shown to be altered over a 4-month period to a degree where the agency themselves could not tell truth from fiction.

Mr. **Leighton**. I would like to respond specifically to that.

Mr. **Oberstar**. Yes?

Mr. **Leighton**. The purpose of a sign-in log is just like any sign-in log you would see at a Federal building. You log people in and you log people out. These are supposed to be, and usually are, preprinted logs. You come in, and if you are a controller, your name appears in typewritten form there and you sign—you actually don't even sign it—you put your operating initials right next to your printed name and the time you come in, generally speaking.

The purpose of these, in the normal course of business, would be to determine when somebody went in and when somebody went out. That is very logical. There is testimony in this proceeding that many people during the strike did not do it. They just came in. All of the schedules were just a mess, and they were getting bodies where they could get bodies, and people would just walk in and walk out—"I'll handle it later"—including supervisors. So there is quite a bit of evidence that: that did not happen and there is a considerable amount of evidence that——

Mr. OBERSTAR. Excuse me. Are you saying that even controllers who showed up for work and worked on that day, who were scheduled for work on that day, did not sign sign-in logs?

Mr. LEIGHTON. Yes, and that is on the record. We can get you copies of admissions of that.

Mr. OBERSTAR. Please provide records of that.

Mr. LEIGHTON. All right.

Mr. OBERSTAR. And if that were the case——

Mr. LEIGHTON. It gets even better.

Mr. OBERSTAR [continuing]. What is the relevance of Mr. Engen's statement that what was significant in terms of sustaining a removal was the absence of a controller's signature? What I want to know is, how does a controller who was on annual leave sign in the sign-in log when he is scheduled for annual leave?

Mr. WOOD. Sir, I think the jackpot question here is, if the FAA was telling the truth all along, and they are saying, "We are relying on the absence of a signature," then you have to ask yourself, well, why did they take nine individuals or more over 4 months, these nine individuals having no knowledge of the facts, put them in a war room, spend over $100,000 to create documents in order to make AWOL entries, and then pass them off as business records showing that these controllers were supposedly contemporaneously marked as AWOL?

Why did they do that if the real case was the absence of a signature? I think that was the answer in the remand hearing, when the agency argued for the first time—they did not argue this at the first hearing, but they argued at the remand hearing for the first time: "Disregard all our evidence; disregard these phony AWOL's; the absence of a signature is what counts here."

The agency attorney argued that in the opening argument. And, strangely enough, he never asked his own witnesses whether that theory was valid. We did. We asked three of the agency witnesses, including their chief witness, Robert Miller, whether any inference could be taken from the absence of a signature on these logs; that is——

Mr. OBERSTAR. What was his answer?

Mr. WOOD. No. "It could mean a lot of things," he said. And that is the truth. It could. It begs the question to look at the absence of a signature because you first have to show that, on the particular date they were charged with striking, they had a duty to report. You have to authenticate the schedule. You have to have the swap books and the spot leaf binders, which they had themselves destroyed. It is a totally fallacious argument.

Mr. LEIGHTON. And, in addition, there is ample evidence in the record that the sign-in logs that do not bear the signatures were created long after these controllers were fired. How can you write a signature on a sign-in log that you don't know exists and that never was in the operational area? They typed in the names. They got other people to sign as if it was an original operating document, or they forged signatures, and the controllers who were fired obviously did not sign in. So the document was not even—you cannot sign a sign-in log that never existed at the time.

And then, further, you can even make this argument assuming that these people were not there. We are not re-arguing whether or not these people were strikers. We are here talking about whether the agency, as required by statute and the Constitution, presented enough evidence to fire them. That is all we are arguing here. So this applies even if the people did not show up.

The fact is, they gave into evidence documents that did not exist at the time, and they purported to have them as being full operational documents, and they were not.

Mr. OBERSTAR. I want to pursue this matter a little further. Before yielding, I have one further question. Is there a standard accepted procedure or practice within the FAA at any of the centers for "updating," as the FAA calls it, or "alteration," as you have called it, of records? Is there a standard procedure by which such changes in records takes place?

Mr. WOOD. I think there were a few witnesses who testified that there are occasions where there is a legitimate updating, meaning a correction of a record. In that type of case, though, first of all, you have persons who have personal knowledge of the facts, which was not the case here. All of the war room participants who were altering these records, most of them were not even FAA employees at the time of the strike.

Mr. OBERSTAR. Including Mr. Miller's wife, Beverly Miller?

Mr. WOOD. That is correct. We cannot determine when she started. The records that we produced at the MSPB show she started October 25. She testified she was in the war room in August, and I think Mr. Miller said so, too. We found records that, in July of 1982, they had back-dated time-and-attendance reports showing some retroactive application of payment for her back from October to August. So we cannot determine when she was an FAA employee.

All we can say is that, unequivocally, she had no personal knowledge of any of the controllers' schedules, their leave or anything else, and yet she was among the group that were, like her, not FAA employees at the time, that were put in this secret war room, a process that was kept secret from the people that did have personal knowledge, the supervisors, and the sole purpose of this process was to manufacture evidence which they would later pass off as an ordinary business record.

Mr. OBERSTAR. I sidetracked you with that question. We do have more detailed evidence about the role of Mrs. Miller and her pay circumstances.

However, back to the point earlier of a procedure for changing records——

Mr. WOOD. Yes, sir?

Mr. **Oberstar** [continuing]. There is a procedure, there are times when—

Mr. **Wood**. I am sorry.

Mr. **Oberstar**. It is my fault; I sidetracked you. I am sorry.

Mr. **Wood**. Now, the ordinary procedure would be for the supervisor who has the personal knowledge to make an amendment—if it is a T&A amendment, I think they have a regular form for that, if it is a sign-in log—to make the amendment and then date and initial the entry so that someone can determine that there has been an amendment, number one, so it will not be passed off as an original; and, secondly, to indicate to the world the date the amendment was made and the person responsible for it. In almost all of these cases, the entries were made to make it look like they were original entries.

Mr. **Oberstar**. Is a controller ever present with those who are making changes under other circumstances than the 1981 incidents? Is a controller present when other officials make a change in record?

Mr. **Wood**. Yes, sir, and we brought that out at the hearing. There was one case where they went so far, in order to make a T&A look like an original, that they actually forged an initial of a controller on an annual leave thing. It really did not relate to the charges; it was just that they were trying to make a document look like an original.

I confronted Mr. Miller with that document at the trial, and I said, "Mr. Miller, how in the world could this controller sign this document in October of 1981 when he was fired in August?" I said, "That has to be a forgery." And he said, "Yeah, it does." I said, "Did you do it?" "Well, no." "But it does have to be a forgery?" He said, "Yes."

I looked down at the bottom of the form, and the signature at the bottom of the T&A was "Robert L. Miller."

Mr. **Oberstar**. Thank you, Mr. Wood. My time has expired.

The gentleman from Pennsylvania?

Mr. **Clinger**. Thank you, Mr. Chairman.

Just following up on the chairman's last question, there is, then, some accepted procedure for making changes in the T&A logs, sign-in logs, et cetera, but the difference between what would be accepted procedure and what was done in this case, you are telling us, was that a change would have to be initialled, date indicated when that change was made, and in these cases, that was not done?

Mr. **Wood**. That is correct, sir.

In addition, these records here were supposedly the records which formed the "material relied upon" by the agency decisionmaker, which means they were locked in at a point in time. In other words, if the records were not good—and that is what we hold is the case—and Mr. Gunter, who made the decision to fire 454 controllers at the Chicago Center, relied on that evidence, at that point, even for good purposes, they could not have changed it because it was locked in.

It was called the material relied upon. They have to show that to the controllers at their oral replies, and they cannot change it even for the purest of purposes, because at that point it is evidence. What is incredible about this case is that about 90 percent of these massive alterations took place after the point in time when Mr. Gunter decided to fire them, after the point in time they became evidence.

I venture to say there is not an attorney in the country that would not like to better his own case by monkeying with the records to support it, but he knows what would happen if he did.

Mr. CLINGER. I think you have testified that, during the period in question, during the 3-day period, things were in such chaos that, in effect, people who were coming into the office and going to work failed to sign in. Is that correct?

Mr. WOOD. Yes, sir. As far as we could determine, they had a totally chaotic situation. Number one, they had documents that they never produced anywhere, even to this day. They had what they call a security sign-in log system at the front, what they call the watch desk, and various people who came into the Center apparently signed in there, and often, because of the chaos of the strike, they did not sign in on the sign-in logs.

I must say that the condition of the logs as I think they appeared—because I have never seen any form of the original evidence—was that some areas of the Center—and there were seven areas of the Chicago Center—some apparently maintained some form of log. Others maintained a totally different type of log than ordinarily they maintained. Others maintained no log. So they had a totally chaotic situation at the time.

Mr. CLINGER. So, because they were incomplete—in other words, there potentially were people there who had not signed in, and so forth——

Mr. WOOD. That is correct.

Mr. CLINGER [continuing]. They were unusable, in effect, as evidence of who was there or who was not there at the time?

Mr. WOOD. Well, when you say "unusable," I don't know if I agree with that. I think there came a point in time when they had to decide what type of case they were going to present against these controllers. In other words, they had to decide, are we going to tell the truth about the state of our records or not? And somebody made the decision in the FAA, we are not going to tell the truth. We are going to manufacture these records and pretend we had them all along.

Mr. LEIGHTON. May I interject, Congressman?

Mr. CLINGER. Yes.

Mr. LEIGHTON. Just in terms of having gone to a lot of other proceedings at other facilities, on their face, the Chicago records do actually look beautiful. You would think there was no strike there. I mean, they did every last day, things typed, just incredible. They do look gorgeous. Of course, they are not real.

Mr. CLINGER. I think, in your written testimony, you indicate that these records were the sole evidence that was used, and you are saying that in all, however many cases there were, there was no other evidence other than the documentation? There were no admissions, there were no sightings on the picket line, there was nothing except the written record in every case?

Mr. WOOD. Well, Mr. Klein, who appeared at the first hearing, can correct me if I am wrong, but there were certain controllers who, in spite of the advice of counsel, as I understand it, did present fact cases, and I think, in response to the fact cases, the FAA——

Mr. CLINGER. What do you mean by "fact case"?

Mr. WOOD. Well, in other words, I think the position of Mr. Klein was that this was phony evidence. We have proved it. They did not make a prima facie case, so we are not going to rebut the agency's case. And he rested, for those controllers, at the end of their case.

As to other controllers, they wanted to affirmatively prove, in spite of the lack of the agency's case, that they were innocent; that is, they were on approved leave or some other category.

As to those controllers, there were certain efforts made by the FAA to introduce a very ambiguous set of videotapes which showed their presence near where the picketing occurred. That was very limited. But as to the controllers that we are referring to, the 168 we are talking about, the answer is no, there was no other evidence.

Mr. CLINGER. There was no videotape or witnesses?

Mr. WOOD. No, sir. In addition, Mr. Gunter, the only agency witness who did appear, affirmatively stated, "I have no personal knowledge that any one of these individuals was on strike."

Mr. LEIGHTON. Before leaving that question, I think it is important to understand that what was presented to the MSPB as the agency's evidence is the so-called adverse action file, sometimes called skeletal file. It looks a little bit like this [holding up a manila file folder], has sections, and one of the sections, the one that we are focusing on, says "The Material Relied Upon."

In that, you not only have sign-in logs and time-and-attendance reports and things like that; you have narrations of the agency that could include picket sightings and things like that in that file. The problem we have, as Miller said, only God could tell whether that file is accurate.

Mr. CLINGER. Did he in fact say that, or was that in response to——

Mr. LEIGHTON. What happened was—no. A long cross-examination took place, and the culmination of it was that, no, he could not tell from looking at this document. We gave him two documents and said, "Which is the original, which is not," and he said, "I can't tell."

Then he said—actually, I did it. I was moving on to something, and then he said that no one could tell except perhaps the Deity. And I looked and I said, "Now, let me get this clear. Are you saying that no one, with the possible exception of God, could tell whether these documents are accurate?" He said, "Yes, that is a fair statement. Yes."

Mr. CLINGER. I think, Mr. Leighton, you indicated that you had looked at some other centers, and I am wondering, have some of you represented controllers fired from other FAA facilities?

Mr. KLEIN. Yes.

Mr. CLINGER. All of you?

Mr. KLEIN. Yes.

Mr. CLINGER. And have you compared the means by which the FAA facilities from which these controllers were fired prepared and processed the documents used to justify those firings in cases other than at Chicago Center?

Mr. Wood. Well, for myself, sir, I represented three different centers or facilities—Chicago Center, West Chicago Tower, and the Meigs Tower, which are all in the Chicago area.

The only other evidence that I had that something even akin to this was going on was in a case of a controller from the West Chicago Tower who had a very bizarre watch schedule. She was on annual leave, and I looked at a watch schedule, and it contained, I think, five different alterations on one day. They changed the schedule, I mean, five different times in one day.

I was able to get that case out of the main stream—that is, the Merit Board, the Federal circuit procedure—into the district court on a different legal theory and get depositions of the West Chicago Tower chief and supervisor, and I asked them about these alterations, and their unique claim was, "Well, it was altered but we don't know who did it."

The controller won her case out of the district court in Chicago. But the Meigs Tower, as far as I could see, had—and I represented controllers there—had ordinary records.

Mr. Clinger. All right. I guess my point is that, in your experience, then, was there anything or any instance or any center other than Chicago that had the magnitude of the kinds of changes that were made in Chicago Center?

Mr. Klein. Absolutely not. We saw the records from probably hundreds of facilities, and there was no instance not only remotely like it, but there may not have been any instance like it at all.

I think that, for the most part, people who created the operational records got on the stand and testified that they had done so and verified the accuracy of those records. That has been my experience.

Mr. Leighton. My firm defended controllers throughout the entire country including Alaska and Hawaii. This is an exceptional circumstance. Frequently, the best evidence was when FAA would bring in operational people, an area supervisor or an actual on-line supervisor, and they would come in and say, "I was there August 1 and he wasn't, or August 3 or 4 and he wasn't, and I would remember it because I was short-handed."

There is nothing you can do with evidence like that. They did not do that in Chicago Center.

Mr. Clinger. And you had no testimony to that——

Mr. Leighton. None. And they refused to bring these people in.

Mr. Klein. Right. And in fact, in the situation Mr. Leighton posed, not only would the supervisor make that statement, but they would produce the records that verified the statements. "And my record shows that the person was not here," which is not, of course, the case in Chicago.

Mr. Clinger. Thank you, gentlemen. I think my time has expired.

Mr. Oberstar. The Chair recognizes the gentleman from California, Mr. Mineta.

Mr. Mineta. Mr. Chairman, I want to thank you for having these hearings. It is outrageous what we are hearing and what you have developed here. I am not sure whether Mr. Miller, Mr. Gunter, the FAA or the MSPB ought to be on trial and examination in this whole issue.

But let me get a sense of what you believe to be the motivating aspects or what drove the FAA officials in altering the records of the controllers there at Chicago. Were these the records of people who just didn't show up for work that day, and so the records were then altered to show that they were AWOL? Or were they the records of people who were activists within the PATCO organization who were sort of fingered to be given this kind of treatment?

Mr. WOOD. At far as I could determine, at the Chicago Center, virtually everyone who did not show was fired. There were very few exceptions to that. I think there came a point in time—when you asked about what motivated them, I think the simple answer is, what motivates anybody who engages in evidence tampering? They want to win their case.

I think there came a point in time when they had to make the decision—the other centers apparently were relying on the documents as business records. Their records were in disarray. And, other than tell the truth about that, they decided, well, we are—they were arrogant enough to think that they could get away with manufacturing records and entries, and if they kept it secret enough, that they would get away with it.

Mr. MINETA. And so anyone who was even legitimately absent was subjected to this kind of abuse?

Mr. WOOD. Absolutely, absolutely.

Mr. KLEIN. That is certainly correct.

Mr. LEIGHTON. We should emphasize, there is no record evidence, at least that I know about, that shows what the intent is. This is our speculation. It could very well have started out for good reason. Certain mid-level people, particularly Miller, were assigned the job of making sure the evidence was right and correct.

There was no doubt that the intent of the FAA and the Government and the White House was to deal with air traffic controllers severely, and I personally have no problem with that, so long as it is done fairly. I mean, there was no doubt that, if they struck, the government intended to come down and come down hard. That message was clear.

What may have happened is, they may have said to themselves that, "Well, we had a fairly good case"—and in many cases they may have had a fairly good case—"but it could be made better. There may be holes in these two days. We didn't have logs for them. We will make a log. We will make it airtight." That, of course, is what we are talking about here. That is improper.

Mr. WOOD. The reason I disagree with the statement that their intent was—and they have testified to this—we were just trying to make the records accurate. You know, I have thought about that for years now. If that was true, why did they keep this alteration process secret from the very people who could make it accurate, the supervisors?

We interviewed—you know, the 25 managers and supervisors that we deposed and had at trial, we did not name them; the FAA did. And they universally testified that the AWOL entries were not made by them; that original annual leave that was put on the logs by them was altered; they were not consulted; they did not know about this war room.

So I cannot believe that they had the pure motive of making these logs accurate, not with the methodology that they used. They used people that did not have any knowledge of the schedules.

Mr. OBERSTAR. Will the gentleman yield?

Mr. MINETA. Absolutely.

Mr. OBERSTAR. The information just provided by the witness has been verified by staff. That information is in the MSPB proceedings and is available for further inspection. I think that is a very significant point, that those who had significant knowledge of the facts were not questioned; that these alterations occurred by people other than those who had hands-on knowledge and what was occurring and who were the people responsible for showing up for work at certain times and who was scheduled for annual leave.

Mr. MINETA. Well, then, what about the MSPB? Why did they not want to get to the bottom of this whole thing to find out where the truth was in terms of what went on?

Mr. WOOD. I sometimes like to think they did, but I think that is why the presiding official tried to induce the agency to settle these cases. I think he knew that there were some problems. But I think there was an awful lot of pressure put on him.

At the point in time when the presiding official made the decision, as Mr. Leighton said, he was secretary to the full Board, and he was an employee at will. Congress had not yet given him tenure. As a matter of fact, the presiding official involved here was a holdover from the Civil Service Commission, and when they passed the Civil Service Reform Act of 1978, the presiding officials became employees at will. They were terminable at will. And only recently have they acquired tenure.

So there was an enormous amount of pressure, and I think that we have to understand that the head of the Merit Systems Protection Board, Mr. Ellingwood, who took office in December of 1981, was White House attorney, counsel to the President, advising him how to handle the controllers in August of 1981. I don't know how more plain I could put that.

Mr. MINETA. So, irrespective of the evidence that might be presented, was the fix was in?

Mr. WOOD. Well, I think it is a case of any stick to beat a dog.

Mr. MINETA. I am sorry?

Mr. WOOD. Any stick to beat a dog.

Mr. LEIGHTON. In terms of Chairman Ellingwood, I think, to be fair, he has said that when he was in the White House Counsel's Office, he was not involved in any of the air traffic controller issues. But that has been disputed. In terms of whether the fix was in or something of that nature, I cannot say. I cannot say that.

Mr. MINETA. That is not your——

Mr. LEIGHTON. All right, fine. So long as that is clear.

Mr. MINETA. That is my statement about what transpired.

Mr. LEIGHTON. All right.

Mr. MINETA. I don't want to do anything that is going to jeopardize your case or anything else.

Mr. LEIGHTON. Thank you.

Mr. MINETA. I am just saying, from my perspective of listening here and seeing what I have seen in the past, it is outrageous what occurred, and because I have been involved personally in cases where there have been legitimate absences, in which people were on leave somewhere, and then they were deemed to be AWOL on the third of August, and consequently, fired.

Mr. LEIGHTON. Right.

Mr. MINETA. Others were intimidated, and there was actual physical evidence of intimidation. People were afraid to go to work that day, and yet, were summarily fired. To have this kind of Gestapo-like action by a governmental agency is something that is outrageous, because it is something that I personally experienced as a young boy being evacuated in turn from the West Coast, only because of my ancestry.

It wasn't an excuse in 1942, and it was no excuse in 1981. So that is why I feel very strongly about due process; about constitutional rights; and I see the abuse in these cases. It is outrageous.

Mr. LEIGHTON. I join you there.

Mr. MINETA. Thank you, Mr. Chairman.

Mr. OBERSTAR. The gentleman's point has been very poignantly and powerfully made.

It does appear, in light of evidence the committee has obtained and the statements of witnesses, that FAA has, in these instant cases, turned a fundamental principle of American jurisprudence on its head: instead of being innocent until proven guilty, controllers were presumed guilty—i.e., AWOL—until they could prove otherwise.

The gentleman from New York, Mr. Molinari?

Mr. MOLINARI. Would it be fair to characterize what we have heard so far today that, unlike the other air traffic facilities throughout the country, what took place at Chicago Center was, anybody that was not on duty the day of the strike and the day after that, fire them regardless of what their reasons were, legitimate or otherwise?

Mr. WOOD. Yes, sir.

Mr. LEIGHTON. Yes, sir.

Mr. KLEIN. It appears that way.

Mr. MOLINARI. Do you all concur in that?

Mr. KLEIN. It appears that way.

Mr. MOLINARI. Can you give this subcommittee, then, an idea as to, percentage-wise—it may be difficult—of those that were reinstated at Chicago Center through the appeals process as opposed to system-wide reinstatements?

Mr. WOOD. I think there was a total of 454 air traffic controllers fired out of 494 at the Center on August 3, 1981. Ultimately, a total of 25 won their cases.

Mr. LEIGHTON. So far.

Mr. WOOD. So far.

Mr. MOLINARI. I have some rough figures I did on my own, and what appears to me is that, so far, those who have reinstated at Chicago Center are at least double that which occurred system-wide for annual leave, sick leave, and other reasons. Does that sound like it is in the ballpark?

Mr. WOOD. Yes, sir. I think you also have to consider that the conditions at the Chicago Center, for some reason—and we have never been able to figure out why—did not emulate the other centers as far as the number of returned controllers under the Presidential 48-hour period.

I think, at Dallas-Fort Worth, for example, they had something like 55 percent returned, and the total returned controllers at the Chicago Center was about 7 percent. I think it directly relates to the attitude of the chief of the Center, number one.

When I first heard, for example, that he locked the gate half-an-hour before the deadline, I could not believe it. I had to check this out, and we ultimately established that yes, he did. He locked and chained the only access gate to the Center half-an-hour before the people who were trying to make up their minds could return. So there are a lot of things unique about the Chicago Center.

Mr. **Molinari**. Aside from attitude, though, isn't it a fact that many of the other facilities, anticipating a job action or a strike, did tie the hands, in effect, of the controllers by getting statements before time or recordings from them or had them sign statements that, in the event they are on annual leave, they had to report back, whereas this did not happen at Chicago Center?

Mr. **Wood**. It happened in June. That was another aberration about the Center. They implemented that FAA—I think it was called a RENOT or a regional order—in anticipation of the first threatened PATCO strike in June.

We uncovered evidence that, as of the August 3 threatened strike, they did not have those who were scheduled for annual leave on that date on notice that they were supposed to come back. So we had controllers that were out of State, out of the country, and on legitimate approved annual leave. They came back and they had a notice in the mail when they came back that they were fired.

One of the individuals, for example, was in Minnesota, 400 miles away from the world, and no telephone. He was hunting, and he comes back and he has got a letter. He goes to his oral reply and he sees documents which show his scheduled annual leave, and he goes back and thinks to himself, "Well, obviously, they made a mistake. They are going to have to pay me the annual leave. They will see I was not withholding my services." Unknown to him, after the oral reply, Mr. Miller and his group changed the annual leave to AWOL, and that man is fired to this day.

Mr. **Molinari**. I would like to turn on the issue of due process.

Mr. **Oberstar**. Will the gentleman yield at that point?

Mr. **Molinari**. Sure.

Mr. **Oberstar**. This case stuck out in the course of the subcommittee inquiry, and I found it very intriguing. I think it was a slip of the tongue; that is fishing season in Minnesota, not hunting season.

Mr. **Wood**. Sorry, sir. [Laughter.]

Mr. **Oberstar**. And I think it was somewhere up in my part of the world that I represent in northern Minnesota. When you are out on a lake, you are away from phones, and they cannot get you. I mean, there is just no way you can be reached, and anyone who is serious about fishing is seriously out in the middle of the lake, and the case just cries out for rectification.

I thank the gentleman for yielding.

Mr. MOLINARI. I would like to turn to the issue of due process, which is, I think, a very serious issue and maybe the heart of what we are discussing here.

In the Code of Federal Regulations, Title V, Administrative Personnel—and I am sure you are familiar with this section—paragraph 2, page 546, it says, "The agency shall designate an official to hear the employee's oral answer who has authority either to make or recommend a final decision on the proposed adverse action." It goes on from there.

From my reading of all the oral hearings, the designees never made any final decisions, never recommended any final decisions, except on the bottom of the form it said, "Recommendation: Further facility discussion," and they just put an X, the yes or the no.

Now, is that not violative of due process?

Mr. KLEIN. I would like to respond to that. I think that it clearly violates due process, and I would like to add to the facts that you just responded that most of the reply officials were not actual supervisory personnel. Some of them were not employees of the FAA at the time which they were designated to be oral reply officials. These were retired individuals, people brought back into the system for the sole purpose of sitting there and listening to——

Mr. MOLINARI. I am going to get into that in a moment. But on the question of due process—I could envision, for example, that in some cases, no matter how small, that had they adhered to this section, that some of the hearing officers might have recommended reinstatement.

Mr. KLEIN. You would like to think——

Mr. MOLINARI. That could never have happened here under the procedures they adopted.

Mr. KLEIN. That is exactly correct. Mr. Gunter, I believe, testified that not only did no one make a recommendation, but if they had, he would have ignored it.

Mr. MOLINARI. He would have disregarded it. All right.

Now, you are familiar with the GENOT that was sent down from Headquarters, Washington, the Office of Labor Relations, advising them on how to handle the process?

Mr. KLEIN. Yes.

Mr. MOLINARI. On page 1, it said—again, now, this is the official document that all air traffic facilities are receiving, how to deal with the issue—"A representative must prepare a written summary of the oral response and recommend what the decision on the proposed action should be." So, there again, we cannot assume that everybody knows the law, but we can assume, when they receive this from headquarters, that they were put on notice that it should have been adhered to and followed, and it was ignored. Am I correct in that?

Mr. KLEIN. Yes, and I think the testimony would show that these individuals were not at all trained or given——

Mr. MOLINARI. You are getting ahead of me.

Mr. KLEIN. I am sorry.

Mr. MOLINARI. Then the next statement says, yes, indeed, FAA officials designated to hear replies must have sufficient judgment and experience to perform this function. And maybe I had better read the next one so you do not get ahead of me again. Bear with me a moment. "Officials not employed by FAA should not be used for this purpose."

So, on top of everything else that this document says, in giving guidance as to how the hearing should be conducted and determinations made, we have two additional criteria. The officials designated had to fit the criteria of having judgment and experience to perform the function, and then the caveat that officials not employed by FAA should not be used for this purpose.

Now, I would like to get your observation on that portion of the GENOT.

Mr. KLEIN. Well, the entire procedure that you have outlined through law and the GENOT is dear to my heart because that is something that I felt was a major deficiency, and in terms of this hearing, I think it is telling because it is the same kind of attitude that pervaded from the highest levels of the facility and perhaps of the region.

My answer to a question in considering why would they do this is, I think, is simply that the system totally ran amuck, and it ran amuck at every procedural level. I think there are analogies that we are seeing in Washington today about people knowing what the law is and doing what they want to do in any event, and there are several analogies to that.

The officials of the Government in the facility decided that they were going to strike down these people and do so quickly and totally eliminate all due-process rights, and the specific GENOT that you read was totally disregarded in almost every single instance, putting the aside the law, which—I think the point you made is, well, people may not know the law.

I think the law is obviously supreme in this instance, but you are correct that it is the GENOT that would institute it. Under any scrutiny at all, the oral replies at Chicago Center were a total and complete sham. These people had no chance whatsoever, and they were totally ignored.

Mr. MOLINARI. Thank you.

Mr. Chairman, before I forget, what I would like to do, with the consent of yourself and members of the committee, is to circulate to the panel a copy of the letter that we received, that I received today, from Admiral Engen, and to ask each of the lawyers testifying on this panel to give us their observations of that and to hold the record open for 10 days for their response to guide us.

Mr. OBERSTAR. Without objection, the letter will be available to the witnesses, since it has already been entered officially in the record of the hearing by unanimous consent.

Mr. MOLINARI. I thank the chairman.

Mr. MOLINARI. I would like to now ask a question of the panel. One of the key questions, in reading all the material that comes out, is that the FAA's position on the alterations is that they were not alterations; they were not forgeries but merely amendments to a file.

Since you are the attorneys vested with the responsibility of trying hundreds of cases, could you differentiate for us the difference between what you believe a material alteration is as opposed to an amendment to a file, obviously, as it applies to these cases?

Mr. Wood. I think if the records had to say something in order to make the prima facie case, under the formula for the strike cases set by the MSPB, if they were business records, they had to say that there was a contemporaneous recording by somebody with personal knowledge that a particular controller was scheduled on a particular day that he was charged with withholding his services and, without excuse, did not appear.

The way that they attempted to build their case was to pretend that they had these records, number one; and, number two, that these records did indeed have a recorded AWOL on them and that they were reliable.

In furtherance of that scheme, the chief of the Center appeared and particularly identified these as ordinary-course-of-business-records, and when asked if they altered them or changed them, he said no.

I think that is very significant because, if there was any legitimacy to their present claim, why did they lie about it?

Mr. Leighton. Stated another way, they have said that all they were doing was amending or updating the evidence. Think about that—updating evidence. That means that originally it was not dated properly and it needed amendment. You just do not do that.

I mean, there is a difference between updating a document that you are going to use for later purposes, pay purposes and things like that. Updating a document for the purposes of administering economic capital punishment to somebody is an entirely different story, which is the only reason that they did this. They could have done it separately. They could have done it in a way that we could tell what was amended and what was not. But they destroyed the originals.

Mr. Klein. I would like to add as well that in one instance the Government stated that they "re-created" a record, which is an interesting theory. It is hard to figure out what that means, but basically, this was a situation where a group of controllers in the DSS area did not have a watch schedule. It did not exist in the ordinary course; it was not necessary, or whatever. And yet in their files there was one, and when questioned, the FAA said, well, they "re-created" the record.

I would suggest that, if that record was absolutely accurate—maybe it was; perhaps it was not—that in attempting to create the illusion that that record appeared in the ordinary course would certainly destroy any of its reliability.

I think that laws and methods and procedures over the course of years are created because memory is frail, events become somewhat murky, and that, if you amend the record four months after the fact and try to make it appear that it was done contemporaneously, that is a tremendously dangerous thing, and that is what the rules of evidence do not permit.

I think there are legitimate ways of amending things by doing it contemporaneously, by initialling it, by dating it. In this case, they would date things that they did in October, perhaps, as if it was done in August, and that is a tremendously dangerous thing. That is the distinction, I think, between re-creation and updating and amending. You cannot do that with evidence in any Federal court, in any event.

Mr. **Molinari**. Just one last question, and I think my time is up.

On the issue of the Miller stamp, why do you suppose that they—whoever "they" is—wanted to put that stamp on that last page after the fact? What is the significance? Suppose there was no stamp? What did that do for their side, or what did it not do?

Mr. **Leighton**. You have to understand the time at which this occurred. The original decision by the presiding official came out. It was taken up to the full Board and remanded—not reversed but remanded—because the evidence appeared unreliable, and with the specific mandate to determine the reliability of the process.

If you have an unreliable process, you have unreliable evidence. So, to determine the reliability of the process and then, thereafter, the reliability of any ensuing evidence, they have what is called a Borninkhof analysis on hearsay evidence in proceedings where only documents are introduced. One of the indicia of reliability is that an official, a Federal official especially, has certified it to be true.

This is the first time the Borninkhof analysis was applied to this case. It is after the original case, after the evidence is in. Up until this time, to the best of our knowledge, there was no stamped document. This related to evidence that not only had been before the MSPB before, but after they knew that there were going to be discovery procedures by us, depositions, interrogatories, document requests.

We requested all of the documents, including the back sides of the ones that had been submitted. Then and only then did the stamp appear, and it satisfied the Borninkhof test.

Mr. **Molinari**. Thank you, Mr. Chairman.

Mr. **Oberstar**. The gentleman's time has expired.

Gentlemen, in the middle of the MSPB remand hearing, the presiding official, Mr. Manrose, suggested that the FAA consider settling the case. Why did he make that suggestion? What was the response of the FAA? When the hearing reconvened, what further discussion of settlement took place? I would like you to reconstruct for the committee—not re-create but reconstruct for the committee—that series of events because I think it is very significant here.

Mr. **Leighton**. Go ahead.

Mr. **Wood**. I think the hearing was adjourned four days, but there was no negotiation whatever.

Mr. **Leighton**. Take it from the time that he went down——

Mr. **Wood**. The presiding official said specifically he was very disturbed. It was at the end of Mr. Miller's testimony, which took the first four days of the hearing.

Mr. **Oberstar**. What was it that triggered his attitude of being "disturbed"?

Mr. **Wood**. I think probably the signature stamp above all. That was the ultimate arrogance, to attempt to fake certification in a remand hearing which was designed to inquire into the origin of the documents. A more arrogant fraud on the Board could not be imagined.

But I think when that came—we showed the fraud on the wall of the courtroom by showing the original 1981 evidence and then, with a document projector, showing the 1984 version. The one showed no bleed-through on the signature of the rubber stamp and the other did.

Mr. Miller was just at a loss. He first said that he did not put his signature stamp on there. He said that the people in the war room did. We asked him to identify who did, and he went through about five names including his wife. And then I confronted him with the fact that we had deposed these people and they had all sworn under oath that they had not only not used his signature stamp on a document but they did not see it in the war room, and in fact I believe his wife said he kept it at home.

At that point in time, I asked him just directly, "Did you lie about that?" and his answer was, "Not intentionally." Anyway, the FAA never provided an explanation for that. It was just a bizarre, stupid trick that he tried to pull. At the end of his testimony, he was totally impeached.

Mr. Manrose met us the following day and told the FAA, "Your case is in serious trouble. There isn't anyone in the court room who doesn't realize that, and I suggest you settle."

Having practiced before the Merit Board for some years before these cases, with Mr. Manrose, I remarked to my co-counsel here, "I have never seen him do anything like that."

The FAA was startled. The first thing they did was, they—I think Mr. Brunati, who was their technical advisor, looked at me and said, "Why don't you give us 15 names? Maybe we could sell that." But I think there were 72 involved in that hearing. I looked at him and said, "Well, how could I give you 15 names? Are you telling me I have got to sell out the other 57 or what?" It was an all-or-none thing.

Anyway, the hearing was adjourned four days. We were told that they had to get authority from Washington, that there would be a negotiation. I believe, Sunday night, Mr. Leighton got a call late. There would be no negotiation whatsoever.

I think the hearing started the following Tuesday, and the first question out of my mouth was, to the FAA attorney in open court and on the record, "Are you going to provide us with any explanation about this rubber stamp? Are you going to provide a single witness who is going to say that he affixed the rubber-stamp signature of Robert Miller to these logs?" And, almost arrogantly, the man stood up and said, "I have no intention of producing anybody to that effect."

Mr. **Klein**. And I would like to point out that Mr. Manrose did not mention the signature stamp issue at all, nor was this raised further in his decision.

Mr. **Leighton**. But it was raised by us, obviously, in the pleadings before, and in making his decision, he chose to ignore it.

Mr. **Oberstar**. And at that point the hearing then—apparently, up to that point, you felt that you had the case won?

Mr. **Wood**. Yes, sir.

Mr. **Klein**. That was the second time I made that mistake. [Laughter.]

Mr. **Leighton**. At that point, however, I believe it was Mr. Klein who decided to take a gamble and put in the record information about the settlement negotiations, which normally is not done. He put it in there, and the FAA objected and, I believe, moved to strike, but, interestingly enough, the presiding official did not strike it. I am not sure whether the motion to strike was made. Certainly an objection was filed and it was ignored.

Mr. OBERSTAR. And what happened after the reconvening and the four-day interval, Mr. Wood? What then?

Mr. WOOD. Their case got considerably worse. I think two out of the next three witnesses testified to a completely different type of alteration; that is, a completely manufactured record.

Mr. Campbell testified that, for two to three weeks, in September of 1981, he was in a separate room of the Chicago Center where he had a stack of blank sign-in logs which he would prepare in such a manner as to make it appear that the supervisor had done it a month before. He would back-date it, and that was submitted as evidence.

When we asked Mr. Campbell, "Who directed you to do this?" he said, unequivocally, "Mr. Miller." And yet Mr. Miller swears he did not know that Campbell was doing it. And then when we confronted Mr. Campbell with Mr. Miller's denial, Campbell said, "I swear to God Miller told me to do it." And he said, "I gave them to Miller every day."

We had Mr. Markwell in the second week of the hearing with the identical thing, the re-creation Mr. Klein talked about—a totally bogus piece of evidence that Mr. Miller, he said, directed him to prepare. Again, Miller denied doing that.

We had Mr. Beeson, who had an incredible account of logs he said he made up for all of the areas on August 4, 1981, and when you compare his testimony with the records that appeared later, there is no comparison. Whatever he says he did never appeared in any record.

I could go on and on, sir.

Mr. OBERSTAR. But, nonetheless, Mr. Manrose ruled in favor of the FAA and against the controllers?

Mr. LEIGHTON. Yes, sir.

Mr. OBERSTAR. And that is the case, ultimately, the classes of cases that is now on appeal?

Mr. WOOD. Yes.

Mr. OBERSTAR. What was the basis for Mr. Manrose's decision?

Mr. LEIGHTON. There was none.

Mr. WOOD. You can look at it yourself. There was none.

Mr. OBERSTAR. What did he cite?

Mr. LEIGHTON. Nothing.

Mr. OBERSTAR. How did he say he came to that conclusion?

Mr. WOOD. There again, I have dealt with Mr. Manrose before, and I consider him a very capable attorney. Again, he is an attorney that has been at this a long time, and he is a holdover from the old Civil Service Commission. I kid my clients. Before this case, I think my record with Mr. Manrose was four and zero; and it is now four and 100-some lost.

But I was shocked at his decision because, first of all, the agency stipulated that the original evidence, whatever form it was, was destroyed. That came in the testimony of Mr. Miller. They stipulated that in order to cut off further examination of Mr. Miller. In other words, once we ascertained that there were all these anonymous alterations, logic would tell you that, since they had already submitted the so-called material relied upon to Mr. Shewfelt in the region, that there must have been a substitution process, and Mr. Miller quickly acknowledged that.

So the next step was, once they acknowledged it and in fact the agency stipulated that the altered product was substituted for the original evidence, I asked in open court, "Well, produce whatever copies of you have of the original. We will compare them." And, without hesitation, Mr. Kupictz said, "That was destroyed."

So, at that point, I looked at Mr. Manrose and I said, "What are we doing here? We cannot redo the case. If they have destroyed the original material relied upon, they have destroyed their case." And he kind of looked puzzled and he said, "Mr. Wood, I will consider that in my final decision."

Now, there is not any notation in his decision that he considered that very important fact. Under Title V of the Code of Federal Regulations, there is an absolute must that when you get a stipulation of fact into the record, that satisfies the appellant's burden of proof. So it was required that he put that in there. You will not find a single reference to the record in his decision, the transcript, and if you look at all of the other decisions that Mr. Manrose has made, you will never see that pattern.

Mr. OBERSTAR. That is correct. We found no reference and no evidence. Yet Mr. Engen says that the record changes by the FAA did not adversely affect the rights of the strikers who were terminated nor form the basis for their termination.

However, in Manrose's decision, he does not make any statement that would substantiate the claim of the administrator in this letter.

Mr. KLEIN. That is correct.

Mr. OBERSTAR. There is considerable attention paid in your testimony to the actions, statements of Mr. Gunter and whether in fact he knew of the alterations made or who made them, and at one point, in several years that have elapsed, Mr. Wood, you submitted a perjury complaint to the U.S. Justice Department. Is that correct?

Mr. WOOD. Yes, sir.

Mr. OBERSTAR. Generally, what was the nature of the complaint? The subcommittee discovered that the complaint had been sent, despite your plea to the contrary, to the FAA attorneys nine weeks before the start of the hearing.

Mr. WOOD. Yes.

Mr. OBERSTAR. We have those documents in our file. Would that be an ordinary course of events where one attorney submits a document, asks the Justice Department to take a certain action and says, if you choose not to do so, please send it back to us; don't send it to the FAA because that has material effect upon our case, and the Justice Department, nonetheless, then sends that document? Is that a customary procedure? Do you know of that kind of thing happening? And then what effect did it have upon your case, if any?

Mr. WOOD. Well, I think, certainly, it tipped the FAA off to some of the things we knew or had discovered before the remand hearing. I had submitted that letter, I believe, originally to Linda Wawzinski, an assistant United States attorney who represented the FAA before Judge Aspen in the first week of the strike, and I had met with her before I submitted that letter and indicated to her, "I don't believe you know it, but you may have submitted some phony documents to a court," and I proceeded to tell her a little bit about what I knew.

She indicated to me that she would keep it confidential; in fact, the first time I met with her, there was an FAA attorney in my office, and she sent him out of the room. She wanted information as to what I had, and I submitted a letter to her, and I specifically told her that, in a case unrelated to the one we were working on—that is, the big Chicago Center remand case—that I had some fear that, if she disclosed the information I was giving to her, it might tip them off as to where we were going to be going in the remand hearing. So I specifically asked her not to do it.

I believe the only indication I had as to a possibility that she might do was a remark she had made when I met with her and, I think, the division chief on an occasion in June when she said, "There might be a time when I am going to have to make a decision as to whether or not we are going to have to turn this over to the FAA."

At that point, I remarked back to her, "I don't object if you send it to people that are not involved, the Inspector General or somebody like that, under a confidential communication rule, but don't send it to the region and don't send it to the people who are going to be defending the FAA at the remand hearing." I was quite surprised to learn that that is precisely what they did.

Mr. **Oberstar**. So the FAA, in effect, had the entire game plan for your defense of the controllers?

Mr. **Wood**. Yes, sir, that is correct.

Mr. **Oberstar**. And they were able, nine weeks before the hearing, to be prepared.

Mr. **Wood**. Right.

Mr. **Oberstar**. Do any of you know of any other cases? You have all practiced before the Merit Board or before agencies. Do you know of any parallel circumstance where that was done?

Mr. **Leighton**. No, I think this is a unique situation. There were what we would consider individual injustices and things like that but nothing as mechanistic as this.

You have to understand that this Center is run—at least at the time was run—as a paramilitary operation, and it was viewed as such by the people inside. This is just one example of some of the things that they did.

Mr. **Oberstar**. Thank you.

The gentleman from Pennsylvania?

Mr. **Clinger**. Thank you, Mr. Chairman.

Mr. Leighton, you had indicated earlier that it was clear that both the White House and the Department of Transportation wanted to be very tough and to make this a tough operation and that you had no problem with that in terms of their position. But is there any evidence, or did you come across anything in the course of your representation, that would suggest that any kind of undue pressure was brought to bear either by the Department of Transportation or the White House to affect the result in Chicago or anywhere else, for that matter?

Mr. LEIGHTON. The only thing that I saw—well, first of all, two phases. I did not see any indication of that when the alteration was taking place; in other words, that there was some direct pressure to alter these documents that was external to the facility. In looking at all of this, I cannot say that I saw anything there.

The only potential problem in this regard was the unusual circumstances under which the presiding official was transferred while in the process of writing what at that time was the most important and the most controversial air traffic control decision.

Mr. CLINGER. Let me stop you there and say, was it in fact unusual for someone to be transferred to Washington? My understanding was that this was a routine transfer for the purpose of giving Mr. Manrose an opportunity to demonstrate his capability to handle a more important function.

Mr. LEIGHTON. I think it was. Let me tell you why I think it was. I emphasize the word "think."

This was a decision where I believe it was the only major remand ever made by the MSPB Board of an air traffic control case, at least a big air traffic control case. A lot of air traffic controllers were involved in this case. It was considered generally, across the board, to be one of the most important, if not the most important, air traffic control case pending at the time.

The presiding official who presided originally was the same one who got the remand. This was Mr. Manrose. It was a long case involving unprecedented activities in the form of discovery, both depositions, document requests, tons of documents, thousands and thousands of pages, a great deal of time, a big case. It went on for a considerable number of weeks; a lot of witnesses; a lot of cross-examination; a difficult case to decide.

In the midst of this important and difficult case, this man is, "routinely" moved to take on major duties at MSPB while writing this very important decision, and the result of that process was approximately two to four pages of substantive discussion, if you take a look at his—I may be off a page or two—a decision that says nothing other than that he affirms what he did before, with no record citations, no legal discussion, no anything.

And then I guess he flunked his evaluation, because as soon as he was finished, he went back out to Chicago.

Mr. CLINGER. So in fact he did not receive a promotion subsequent to the decision, or an increase in pay?

Mr. LEIGHTON. I assume not. That sounds right.

Mr. CLINGER. And his transfer back to Chicago took place immediately after the——

Mr. LEIGHTON. No, I cannot say that. Shortly thereafter. And I want to emphasize here—because I realize there are reputations at stake—I cannot say why Mr. Manrose was transferred. I can say, from a legal point of view, that if I were in charge of a judge writing a very important decision, I would not give him major duties elsewhere on something else. I would let him get the decision done first.

Mr. CLINGER. But it could have been just an error in judgment or an inappropriate assignment?

Mr. LEIGHTON. It is open to all sorts of possibilities, yes.

Mr. CLINGER. Let me move to another area here.

There were changes, substitutions, made in documents both in the war room and at the regional office. Is that correct?

Mr. LEIGHTON. Apparently. Most of the testimony said the changes were made in the war room and then taken up to the regional office by Mr. Miller or others, and then pages were substituted. I do not think there were many where somebody came in and manufactured a new sign-in log. I mean, these are actually government forms that they were using, so they had to start someplace.

What apparently took place was that the war room continued in operation, continued to generate these documents. Then they periodically would go up there and substitute them.

Mr. CLINGER. Mr. Shewfelt was located where?

Mr. LEIGHTON. At the regional headquarters, which is, what, 20 miles away or something like that?

Mr. WOOD. Des Plaines, Illinois, which is about an hour away from Aurora, Illinois.

Mr. CLINGER. So that the documentation then came from the war room to Des Plaines, and it came into Mr. Shewfelt's possession at that point?

Mr. WOOD. Yes.

Mr. LEIGHTON. It was originally shipped up in cartons, put it in his office and left there, and then alterations took place after that time.

Mr. CLINGER. While it was in his possession?

Mr. LEIGHTON. While it was in his possession, in his personal office. He has an anteroom there.

Mr. WOOD. Just to clarify the record, what we introduced at the remand hearing was a list of files that were sent to Shewfelt in September of 1981. These files were supposed to be the material relied upon by the Center.

Then, by a logical process—because, for example, Mr. Cullerton did not start his activity in the war room until October 1 or somewhere around there—we determined that the product of the war room eventually ended up in those files. So there had to be two shipments, logically.

Now, Miller agreed that that happened. I think he limited his involvement to only three documents. I think I asked him, "What did you do with the documents that you substituted at the region?" And he said, "Well, the three I took out, I threw away." So no other witness we could determine was actually the one who took the original records out and substituted the altered product, although the agency——

Mr. CLINGER. In the war room or——

Mr. WOOD. At the region, although the agency agrees, not only through Mr. Miller but through the agency counsel's stipulation, that it did occur. Then when we asked Mr. Shewfelt whether he even knew about this—and all of these were supposedly under his custody—he said no.

Mr. LEIGHTON. Miller has testified that he, himself, went up there and substituted a few documents and that he just threw them in the trash can, the ones that were in there, in the trash can and then walked out.

Mr. CLINGER. What justification did he offer for making those substitutions?

Mr. LEIGHTON. That the documents needed to be updated.

Mr. CLINGER. But in fact, in many cases, they were not updated, were they? I mean, the dates were contemporaneous with the events.

Mr. LEIGHTON. Well, yes. I mean, these are documents that are transmitted as evidence well beyond—everybody has been fired now, and he is updating the evidence. It is no longer at his facility. He is walking into somebody's office—and if you believe Mr. Shewfelt, nobody knew he was there—he walks in and he updates the evidence and then walks out.

He is a party in the case. He is now in a situation where we are going to have a judge, and he is a party to the case, or at least a witness to the case, and he is representing an adverse party to the case and there is a party on the other side. He secretly goes up there, updates the evidence and walks out, and nobody apparently knows about it.

Mr. CLINGER. In your statement, you talk about these as being original evidence from MSPB files at the Great Lakes Regional Office. Were those documents truly originals, or were they something else at that point?

Mr. LEIGHTON. You cannot tell. Many of the documents, they would take the original—it was a very strange operation that they had in the beginning. They had some original documents, and they had a series of controllers going in for pre-termination hearings—oral replies, they are called—and they would review the documents for those controllers just before they went in, and they would make any necessary changes in the original sign-in logs on those.

Now, a sign-in log or a watch schedule applies to a lot more than one person. A sign-in log can apply to three shifts, and there can be 20 to 30 people on there.

So they would make a change as to this controller's status. If the controller was not down there or if he had annual leave, they could change that or they would write in "AWOL," and they would put a copy of it in the file, and then the controller would go in; he would be confronted with that; he would respond.

They would bring back the same original sign-in log out and then, lo and behold, somebody, half a day later or two hours later, on the same shift would come in, and they would have to go to the original. He has got a problem, so they would change the original again, make copies of it, put it in there, put it in the file, and go forward.

So what you should have had in everybody's adverse action file, you are supposed to have a copy of the original sign-in log for that day with the same 20 people with the same inserts. But the evidence is all over the place because they kept changing the original, and at some point in time, as Miller testified, they could not tell what was the beginning or the end of this. They were all copies of copies of copies.

Mr. CLINGER. At what point was Mr. Shewfelt required to certify that these were the documents, material evidence?

Mr. LEIGHTON. When he transmitted them to MSPB as evidence. He took control of the evidence as presented by FAA, and he was supposed to do a due-diligence test of some sort. What he testified to was, he just took their word for it. He said, if he had gone through these documents and seen that the allegedly same sign-in log for one controller as compared to another controller were different, he never would have done it, but he never went through the document to see.

He never certified, either. What he did was—and he has testified to this—he signed a blank certification, which is highly improper. He just signed his name, and it said, "I hereby certify that the following records of blank are true and correct".

He made one of those, and he xeroxed that, and other people—and we don't know who—other people filled in the names of the controllers, and they just slapped that in the MSPB adverse action files and gave it up as evidence. And so he says he was totally removed from it; he just signed a blank certification, and he never saw anybody come in and change it. He doesn't know anything about anything.

Mr. **Klein**. I would like to follow up if I could.

Mr. **Oberstar**. Excuse me. If the gentleman would yield at that point, Mr. Shewfelt testified at the hearings that he exercised no independent judgment on each individual case; he signed—this was a blank check, in effect?

Mr. **Leighton**. That is right, and after seeing what was happening, he was very emphatic about that; he had to choose between two bad options, and he decided to take the option he knew "nothing about nothing," and that is it.

Mr. **Oberstar**. He had never looked at any of these files, had never compared——

Mr. **Leighton**. He had never looked at anything, he never compared them; he just signed one.

Mr. **Oberstar**. And he was not aware that there had been any updating or changes in documentations while they were in his possession?

Mr. **Leighton**. That is what he testified.

Mr. **Oberstar**. Yet he was under an obligation to do so by virtue of his office?

Mr. **Leighton**. That is right.

Mr. **Oberstar**. Exercise his independent judgment.

Yes?

Mr. **Wood**. Sir, I might add, he also conceded, as an employee and labor relations representative for eight years, that if the updating was done, it was improper; it was an alteration of evidence, and he never would have certified the records.

Mr. **Klein**. I think it is critical to point out that there were many different people affected by a given piece of paper. Many names were on a piece of paper. It is my legal opinion that if you take a piece of paper and essentially spoil it for one person, that piece of paper is of no use against anyone else, so that goes to the admiral's letter that it really did not make a substantive difference to any given individual.

We have no idea as to what the original record looked like as to any given person, and if a substantive change was made on that piece of paper as to anyone, I believe it was made as to everyone, and it is not—at the time of the hearing, it was impossible to say that any entry on there was original. Hence, the evidence against everyone—and I think I would also say everyone at the Chicago Center, whether or not they were even at that hearing—that evidence was destroyed and could not be used against them in a legal way, in my opinion.

Mr. OBERSTAR. That is absolutely astonishing.

Is there a procedure within the FAA for destruction of records such as the swap books, the spot leave binders, watch schedules? Is there an FAA regulation that covers time intervals between the time that those documents are created and the time that they can be destroyed?

Mr. WOOD. There was a regional notice, a RENOT, that was sent out through Mr. Shewfelt shortly after the strike which specifically directed all facilities to maintain all time records.

Mr. OBERSTAR. What was the date of that directive?

Mr. WOOD. I believe it was the first week of August, sir.

Mr. OBERSTAR. Do you have that record in your possession?

Mr. WOOD. I will try to provide it for you. It was brought up at the hearing, though. But we will provide a copy for you.

[The information requested was not received by the Subcommittee at time of publishing.]

Mr. WOOD. In addition, the FAA strike contingency plan also referred to the need to document everything. This plan, I think, the final revised version of the contingency strike plan came out in April of 1981. So they were well aware of the need to preserve records.

Mr. LEIGHTON. Mr. Miller also testified that, from prior experience, he knew how to handle evidence. He agreed that this was evidence, and he knew that it had to be immediately locked up and not altered.

Mr. OBERSTAR. Am I right that swap books are not official documents, that that is an unofficial piece of material used among controllers, that it is not an official FAA——

Mr. WOOD. Well, it was unofficial in the sense that I don't know how many centers kept it outside of Chicago, but what they tried to pass off as the schedule or the watch schedule was a document which was created like three or four weeks before the scheduled appearance for the controller, and it was more or less a tentative document.

At the Chicago Center, you had to have certain ingredients in order to really determine a controller's schedule. You had to have, basically, the personal knowledge of the supervisor who operated within the tentative schedule. Amendments to the schedule, of necessity, could not have always appeared on it because there was limited space.

So they had documents called swap books which documented a shift in maybe one 8-hour set, days off. You had controllers who worked what they called day-mids, 16 hours in a row, and because of the necessities of family life or whatever, they would switch with other controllers.

But if you look at the watch schedule, by the time it becomes operative, three weeks after the fact, you have to have a lot of ingredients to know what the individual controller's schedule really is because it might have changed four times.

So that is why the very people that could have made this process somewhat accurate, the supervisors, coupled with the swap books and what they call the spot leaf binders, they were all absent from the alteration process. The swap books, Miller admitted, were destroyed before his war room group ever started altering documents. He had to guess the accuracy of the watch schedule, and if you look at the watch schedules put into evidence, there are probably 3,000 or 4,000 unexplained entries on the watch schedule. Not a single entry on the watch schedule was ever authenticated in two hearings by the FAA.

Mr. OBERSTAR. And in all of the testimony presented at the MSPB and the questioning—and you deposed some 25 supervisors, according to your statement—none of them was involved in the alteration process?

Mr. WOOD. That is correct.

Mr. OBERSTAR. None of them was consulted, brought in, approved?

Mr. WOOD. That is correct.

Mr. OBERSTAR. And at no time was any controller, of course, whose schedule was changed ever brought in and asked?

Mr. WOOD. That is correct.

Mr. OBERSTAR. What is the significance of the FAA statements that efforts were made by the Center to contact those controllers who were scheduled for annual leave on August 3, and in some cases a message was left with the controller's spouse? In one case in the record, the spouse said, "Well, my husband is out in the middle of a lake; you cannot contact him."

Nonetheless, in some of those cases, "annual leave" was crossed out and "AWOL" put in its place. On what basis was that change made, and what is the significance of the FAA's attempt to contact that controller? Did that attempt to contact constitute a legal basis or justifiable basis for changing the controller's record?

Mr. WOOD. Well, I have never heard any testimony—and I attended a total of five, maybe six, different Chicago Center hearings—where there was really any justification for these changes. I mean, the annual leave, the sick leave—there was one case, Thomas McNeil, a controller from Chicago, who was on workmen's compensation. That was beyond the jurisdiction of the FAA to change his records, and yet they did it. They marked him "AWOL."

That man happened to win his case, but the Department of Labor came in and testified, "They don't even have jurisdiction to take the man off workmen's compensation; we have exclusive jurisdiction." But they did it. My only answer is, it was arrogance. They decided that these were very unpopular people and they had carte blanche to do anything they wanted.

Mr. OBERSTAR. I think that is a very material statement which you made right there. I think that probably was the prevailing attitude within the Center at the time.

Does contact by the FAA of a controller's spouse constitute notice to that controller, legal notice and sufficient notice that his annual leave is cancelled and that, therefore, he should report to the Center?

Mr. Wood. No, especially in cases where the leave was relied upon by the controller to take a trip or something of that sort. They knew better than that.

And, incidentally, it was not a case where the annual leave cancellations took place in most instances where that factor was even present. There were some cases where supervisors attempted to contact controllers. I think there were a few where the controllers were contacted and actually came back off of leave. But they were very few and far between. In the main, that was not going on at the Center. That was the exception, not the rule.

Mr. Oberstar. Thank you.

Mr. Leighton. The MSPB has found, however, in controller cases only, as far as I know, that such notice, under most circumstances, is adequate, under circumstances where it is logical to infer that the wife told the husband. I think, in your circumstance, you could come in with independent proof to show that it would not be logical to make that assumption.

Mr. Oberstar. Thank you.

Mr. Clinger. Would the gentleman yield just for one minute?

Mr. Oberstar. Yes.

Mr. Clinger. You indicated that, in some cases, they were notified and did come back. How did they come back? We understand that the gates were locked and nobody was permitted back in. How did they then get in if in fact there was a lockout?

Mr. Wood. Yes, sir. I said the gate was locked at 9:30 on August 5, 1981. It remained closed and chained throughout most of the afternoon that day, and there were certain—another thing I forgot to mention is that, unlike most other facilities, the ability for controllers who were either on leave or very much in doubt as to what they were supposed to do or what was expected of them—there were all kinds of rumors about the application of the President's deadline policy, an extension of it, and all that.

Communication at the Chicago Center between the controllers and the supervisors was cut off by Mr. Gunter. The area phones were cut off. Their normal means of access to their supervisors to learn what they were supposed to do was cut off.

Mr. Oberstar. Let me put this in the form of a question. Is there evidence in the MSPB proceedings of controllers who attempted to contact the Center and could not, who phoned and could not get through on that day?

Mr. Wood. Yes, sir. There are a number of cases, yes, dozens.

Mr. Oberstar. And those who got through and were told, "Sorry, you're fired."

Mr. Wood. Yes, sir.

Mr. Oberstar. The gentleman from New York, Mr. Molinari.

Mr. Molinari. Was it normal for a facility manager to be involved in certifying the removal of controllers in the other facilities outside of Chicago?

Mr. Wood. Well, again, my experience is limited compared to Mr. Leighton's. I could give one example. Before I attended the Chicago Center hearings—and I think strike cases in the Federal sector was an issue unique to all of us—I attended the Rockford, Illinois, Center hearings, and I learned that the chief there, when he understood there was this strike that came down, and there were probably a lot of confused workers as to what to do—there was certainly a lot of confusion in the media as to the application of the deadline—he took it upon himself to, not once but several times, attempt to locate everybody that worked at the tower and tell them their deadline, tell them what they could do to report, and take a personal interest in seeing to it that nobody failed to make it because he was confused or something else.

I was shocked to hear that, in comparison to the Chicago Center, where, as I said, even if the controllers accepted the 48-hour deadline—which, unknown to them, was extended—and they showed up at the appointed hour, they would not have been let in, and many of them were not.

Mr. MOLINARI. Were there other cases where controllers might have called in who were on annual leave or sick leave and advised that they didn't have to worry about it, that their job was safe, and when their time was up, or their sickness——

Mr. WOOD. There was a controller by the name of Lynch who was in Oshkosh, Wisconsin. I had him testify at one of the hearings I was at. He said that, when he got back, he didn't even have to see what was going on at the Center gate, that he knew it was closed, and I think he must have had the home number or something of his supervisor, because he was able to reach him, and he just simply said, he told him he could not get in and he was told to go to the Holiday Inn or something like that and just wait, and I think he got in later.

There was another controller who had appeared on August 3 and 4 at the Center. I think his name is Leonard Bishop. He appeared for work on August 5 at the deadline. He saw the locked gate. He didn't know what to do, and he took off, and his absence was excused, I suppose because he had appeared before the deadline.

I don't know, but there were several instances where you had—one controller I can name, Mr. Romashko. His baby was born at 10 o'clock on August 5, 1981, at the expiration of the deadline. He had told all of the area supervisors about his wife's problem pregnancy. He was with her when the baby was born. She was bleeding. He had to remain in there for several hours. He managed to break off and he tried to call the Center several times, and the chief had cut off the line to his supervisor. That man is fired. I could go on and on.

Mr. LEIGHTON. There are several other instances at other facilities that are documented in the records where controllers called in and said, "I'm out here at such-and-such a place; I can't get in for X number of days," and they were allowed.

There are also documented instances where supervisors, FAA people who did not go out on strike and were part of management, would call and argue and cajole with favorite controllers and convince them to come in, even though it was slightly later, and get them in. So there was a lot more of that being done at other facilities than here.

Mr. MOLINARI. How about war rooms? Were there war rooms at other facilities, or is that unique to the Chicago Center?

Mr. WOOD. I think we could just limit our statements to what we can prove, and as far as what we can prove, the Chicago Center was unique.

Mr. LEIGHTON. There was no doubt, in other facilities, that they had people prepare evidence. You have to do that. As far as I know, they never brought in outsiders, and they never had an operation that would go systematically through these things and make sure they had a perfect case in each case.

Mr. KLEIN. Yes. I would suggest that what they did in other facilities was gather evidence as opposed to prepare it.

Mr. LEIGHTON. And it was frequent to come into a hearing like this and have a lot of mistakes, the world's worst sign-in logs, and have an FAA attorney or a chief or an area supervisor say, "That's right. That's terrible. I forgot to put this down, but you know what I was doing? I was controlling aircraft. That's why I didn't do it." And that went over like gangbusters with the presiding official, and boom.

Mr. MOLINARI. Just one or two more questions.

What distinction is to be drawn between the cases of controllers who returned to work, those whose removals were upheld, and those whose cases remained pending, such as in the Behensky consolidation?

For those controllers who were returned, did the MSPB and the courts, where appropriate, make those decisions based upon the credibility of the documents alone or were there other forms of evidence which provided the basis for those reversals?

Mr. LEIGHTON. It was both. There are some pure document cases out there where the FAA just established a prima facie case by introducing the three types of documents here and having a chief testify that this is what I did, and controllers were fired.

There are many cases out there where they would bring in eyewitnesses: "I was in the tower and he wasn't." So it is both.

Mr. MOLINARI. Mr. Wood, did you want to add to that?

Mr. WOOD. Sir, the only case other than this that I am aware of, where it was a Chicago Center case, and it involved the issue of the altered documents, came about in a trial. I represented a controller by the name of Alan Gerbitz who was on vacation, and his documents were shown to be altered.

Oddly enough, that case came up to the full Board on appeal because the agency was sustained at the regional level. It came up before the Board was aware of the massive nature of these alterations. So when they saw Mr. Gerbitz's case, they had no problem in saying, Well, these documents are altered; they are worthless; the presiding official's reliance on them was misplaced; and Mr. Gerbitz is back to work today.

Mr. LEIGHTON. There was only one controller involved, too.

Mr. WOOD. That is right. And then when they saw that this activity affected more than 100 people, they did not take such a generous view of it.

Mr. MOLINARI. Mr. Leighton, back in July you provided me with some of the documents, some of the briefs and some other documents that you had in connection with the people you are representing. I was reading them last night, and it seemed to me that, at certain points, you were indicating that some of the FAA witnesses had committed perjury.

Do I interpret that correctly? Is that what you were saying?

Mr. **Leighton**. I am afraid so. That is, of course, not for me to determine finally, but it is my opinion that many of the witnesses at the remand hearing, in particular, did commit perjury, and we have said that, and we argued that they had absolutely no credibility all the way along. But that is my feeling. It would have to be referred to somebody else to make the final decision on that, of course.

Mr. **Molinari**. Are there any other criminal violations that you think that people within the system might have been guilty of?

Mr. **Leighton**. Certainly it is worth reviewing the obstruction-of-justice statutes, the false-certification or making a false statement to a Federal agency statute, which is 18 USC 1001. There may be some criminal civil rights violations here. There may be conspiracy. An 18 USC 1001 violation is a felony, so you could have aiding and abetting in the commission of a felony and you could have conspiracy as separate charges. These are all within the realm of possibilities.

Mr. **Molinari**. Mr. Chairman, I have no further questions, but I would like to conclude by thanking the witnesses. I think that what you have done for us is to, in a relatively short period of time, tell us what happened at Chicago Center during that very critical period of time. It is not a very pretty story. It is rather appalling to me, as a lawyer. I try to put myself in your place and wonder what I would have done and the frustrations that I would have suffered.

I agree with those who suggest that this is a black day in the history of the administration of justice and the denial of due process that we went through here today is something that I find very shocking. So I am grateful to you for providing this basis for us so that we have a better understanding of what happened here, and I think that it is going to be a good lesson for us, and perhaps, if nothing else, we may be able to change the system as it stands today to ensure that such a thing will never occur again. I am deeply grateful to all of you.

Mr. **Wood**. Thank you.

Mr. **Leighton**. We to you, too.

Mr. **Klein**. Thank you.

Mr. **Oberstar**. The gentleman from Pennsylvania?

Mr. **Clinger**. Thank you, Mr. Chairman. I, too, would like to thank the witnesses for your testimony here today. I think that it is going to be very helpful to us both today and tomorrow as we hear the FAA witnesses testify. I think it is significant that this apparently was an aberration, that it was fairly limited in terms of the centers involved, and that is somewhat encouraging.

Mr. **Oberstar**. I just have one additional question I would like the panel to respond to. So far, the evidence in the subcommittee's possession tends to support the allegation of changes made to sign-in logs and time-and-attendance records. Not so evident, however, with one exception, I believe, are changes to watch schedules. Is there any way to document or conclusively demonstrate watch schedule changes?

Mr. **Wood**. Yes, sir. First of all, you have to understand that when we were pushing the FAA to admit things, it seemed like every witness would try to figure out what we knew before they would answer, and our ability to show the alterations to the watch schedules was limited because we did not have the luxury that we had with the sign-in logs.

With the sign-in logs, we had fortuitously come across some of the documents as they were being altered and we could make a comparison with the documents that ended up in evidence. We did not have that luxury with the watch schedules.

We did have several witnesses admit that a watch schedule was changed to conform the watch schedule to a log. I think Mr. Neimyer is one where it was unequivocally shown that somebody had doctored the watch schedule to conform with the log.

But as a matter of evidence, there are thousands of changes on those schedules which are unexplained, and the FAA never tried to. They never introduced a single witness to authenticate any of the entries on the watch schedule.

Mr. **Leighton**. The watch schedule that was introduced as the original during the hearing is a big computer printout with large numbers of entries, thousands, perhaps tens of thousands of entries, many of them changes, and there is a question as to at what point in time the changes were made.

I recall one, and I think I recall only one instance at the hearing, after reviewing this watch schedule, finding a change that had to occur—well, let me withdraw that—a change that indicated that the so-called original watch schedule that we had, which was a computer printout, was manufactured just for this hearing.

What happened was, in one or two of the adverse action files, there was a xerox copy of what was supposed to be the original watch schedule, and it had certain entries on it. If you went to the original that was introduced at the hearing, those entries were not on that original and there was no erasure of the entries.

We asked Mr. Miller how this could be, and he could not explain it. So what you had was, you had the original with no entry on it, and you had copies made, supposedly in 1981, with entries on it. We looked it up, we held it up to the light and everything. They just were not there any longer.

Mr. **Clinger**. Thank you.

Mr. **Oberstar**. Have you, as attorneys for controllers, been able to ascertain who directed whom in the alteration of records? Page six of your combined testimony says:

> The FAA took the position that Mr. Gunter had so little knowledge of these records and the alterations made to them that it did not intend to even call him as a witness at the second hearing.

Later,

> FAA submitted an affidavit from Robert Miller which claimed that Miller was responsible for the alteration process.

We have that affidavit:

> Two years later, Mr. Miller would submit another affidavit, in another case, which asserted that Gunter not only knew about the alteration of the records; he specifically directed Miller to take charge of it and told him how he wanted it done.

A further affidavit, "asserted that French personally observed Gunter tell Miller to alter records."

Have you been able to ascertain, on the record, who directed whom?

Mr. **Wood**. Well, I think, at the remand hearing, Mr. Gunter was represented to have very little knowledge. In my opinion—and this is an opinion—because he had already gone on record saying—he testified under oath that there was no alteration. So I think it was an easy way out for the FAA to say at that point, well, he didn't know about them or knew very little about them, and that is why we have to have Mr. Miller.

When it suited their purpose, a few years later, at a point in time when Mr. Gunter had retired from the FAA and gone to work for them as a contract officer and was, I guess, out of my reach, they felt that, on reconsideration, he knew all about it and in fact directed Mr. Miller to do it.

I think we submitted those affidavits to the committee. But they are diametrically opposite positions.

Mr. **Leighton**. It appears to be one or the other, though, as opposed to other people.

Mr. **Oberstar**. Somewhere, somebody had to initiate the process. It did not just spring up spontaneously, sui generis, as it were. It had to initiate from someone you have not been able to verify.

Later, it appears, after the initial proceedings, that Mr. Gunter may be made the fall guy. We are going to pursue that further tomorrow and ascertain the truth, or attempt to do so.

Your opinion now: What do you feel are the costs of the firing process? That is, on the one hand, should the controllers prevail in the circuit court, what might be the ultimate cost to the Federal Government of reinstatement? In the meantime, what have been the costs for the fired controllers, including even those who were vindicated and later rehired?

Mr. **Wood**. Well, it costs $180,000 to train a replacement, and you have to multiply the $180,000 times the number of people that wash out because those are not really replacements. So I venture to say, even if the controllers got their jobs back with back pay, the Government would be well ahead compared to what it would take to replace them.

Mr. **Leighton**. Rather than money, the cost involved here in terms of cynicism, lack of faith in the system, whom can you trust, are very big costs. It seems to me that, as Congressman Molinari said, this is a black mark. It has got to be erased and the system has got to be turned around and run properly.

You have people performing vital tasks in these agencies having to do with records. We have to rely on those records, whether they are records of safety, near misses, and things like that.

People who work in Chicago facilities today and fired controllers both know what happened. They are very cynical. They don't believe anybody. They don't believe the system works. They don't believe it can work. It is the type of cynicism that led to the strike. Labor management, particularly at that facility, was in one of the worst conditions of any facilities, and that is why you had some of these problems.

This is a product of that, and unless it is stopped, unless some respect for acknowledged due process and other systems is recognized out there, you are still going to have controllers with morale problems and attitude problems, both inside and out. I think that is a big cost that has already been paid, and the only way to set it right is to do what you are doing, and that is put the public spotlight on it and bring it up.

It is not a failure of the process. The process could work and has worked outside. I think it is a failure of the people.

Mr. **Oberstar**. I think that cost in terms of morale and attitude and trust may be the greater cost. There will be a monetary cost, already has been some, but the greater cost is that in terms of damage done to the system, to the people, to their trust, the attitude and relationship among controllers and supervisors.

This subcommittee has already documented in hearings last year the morale problem within the FAA, as a result of an extensive survey conducted by the General Accounting Office. The GAO has amply documented the causes for unrest and the problems. The information surfaced in the hearing today and which will surface tomorrow adds to that compilation of concerns.

A final observation. It appears that a web of actions and of statements had been spun in the Chicago office, and once the spinning of the web began, it became almost impossible to extract the principals from that process. And as they proceeded, they more intricately, at each step of the way, involved themselves in turning of the rules and procedures and disregard of procedures, as I said earlier, that are fundamental to American jurisprudence.

It shall be the purpose of the hearings to uncover the truth, and we hope that, as a result of the hearings, we can put this kind of practice to rest forever.

Mr. **Wood**. Thank you, sir.

Mr. **Klein**. Thank you.

Mr. **Leighton**. Thank you.

Mr. **Oberstar**. We thank you very much for your candid, forthright statements, and we realize the great emotional drain that this causes for you and for those whom you represent, but it is necessary in the pursuit of truth for us to go through this process.

At this point in the record, we will include the entire joint written statement of the panel as well as the summary you prepared of the lengthier statement.

[Joint Statement of Messrs. Klein, Leighton, Wood, and Johnson follows:]

SUMMARY OF

JOINT STATEMENT OF

GARY ETHAN KLEIN

—

RICHARD LEIGHTON and

—

PHILLIP S. WOOD

Before the

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

OF THE

HOUSE OF REPRESENTATIVES

For Release on
Delivery Anticipated on
March 9, 1987

SUMMARY

This is a joint statement of, Gary Ethan Klein, an attorney in Washington, D.C.; Richard Leighton of the firm of Leighton and Regnery, Washington, D.C.; and Phillip S. Wood and Richard Johnson of the firm of Pasky and Wood, Aurora, Illinois. We represent a total of 168 former air traffic control specialists of the Chicago Air Route Traffic Control Center who were fired by the FAA in August, 1981. Also joining us as technical advisors are Mssrs. Len DeHainaut, Partick West and Roy Bozych, who are former controllers at the Chicago Center.

The issues and activities being investigated by the Committee today have become collectively known as the "document case". For the controllers involved, these documents ended their professional careers. The documents accused them of striking. No other evidence was offered by the agency to the Merit System Protection Board to support the terminations, other than the scribbled "AWOL" notations on these documents. The agency chose to defend its actions through a totally paper case. It chose not to locate fact witnesses nor to put on live testimony.

We have discovered that these documents used to fire the controllers are the product of what we allege may be the largest and most systematic evidence alteration scheme in the history of American jurisprudence. And, the perpetrators of that scheme and its coverup are government officials.

Prior to the initial MSPB hearing, we fortuitously came upon evidence that, while not even hinting at the immense scale of the FAA evidence manufacturing operation, gave us reason to dig deeper into the agency's case.

Through the course of numerous depositions and sworn testimony at two full MSPB hearings, our investigation revealed that this "evidence" could not be relied on to document anything at all other than the intentions of its creators and its own worthlessness.

These documents primarily consisted of attendance records that were proffered by the FAA at the initial hearing, through the sworn testimony of the Chicago Center Facility Chief, as records which were kept in the ordinary course of business at the Center.

This, the only live testimony given against the controllers, was false.

The Facility Chief, Mr. George Gunter, was confronted with examples of multiple agency copies of what the FAA had offered as supposedly original documents and eventually recanted his ordinary business records testimony. He retreated to the argument that the documents had been "updated" by unknown personnel specialists.

The testimony was false.

On another occasion, he explained the multiple version problem as the result of "mistakes". Also false.

The MSPB was left, at hearing's end, with the agency's only live witness totally impeached and confused, its paper case turned to confetti, and the only fact that remained was that the documents that the FAA offered authenticated and vouched for as evidence had been, in fact, manufactured by the agency specifically to support controller removals, and not by "mistake".

This pattern of agency - proffered testimony and evidence being impeached or otherwise discredited by the appellants only to be replaced by a new version of reality - continued through the remand hearing, and continues to this date.

You have the remand hearing transcripts - they are permeated with evidence of misrepresentation and non-disclosure, on the part of the agency. The import and meaning and origin of the agency's own evidence has changed, chameleon - like, from day to day.

There is overwhelming proof that alteration of evidence has occurred. The agency's interpretation as to the orgins of their own evidence has been, when not blatantly false and contradictory, non-existent.

This documentary evidence, so damning to the fired controllers, has to this day never been properly authenticated, or legally recognized by agency witnesses. It authors have never been identified. Its reliability has never been proven. Yet this "evidence" has inexplicably been accepted and approved by the MSPB as sufficiently probative to terminate controllers' careers.

We submit that this evidence tampering activity, if unchecked, only begets further misconduct of this type. Some of the individuals deeply involved in this scheme, have been charged with the responsibility of compiling statistics on near collisons and operational errors to the public in general and this Subcommitte in particular.

Until their role in this evidence - tampering shceme is clarified, one has to wonder how confident the public and Congress can be in what they report.

JOINT STATEMENT OF

GARY ETHAN KLEIN

RICHARD LEIGHTON and

PHILLIP S. WOOD

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This is a joint statement of, Gary Ethan Klein, an attorney in Washington, D.C.; Richard Leighton of the firm of Leighton and Regnery, Washington, D.C.; and Phillip S. Wood and Richard Johnson of the firm of Pasky and Wood, Aurora, Illinois. We represent a total of 163 former air traffic control specialists of the Chicago Air Route Traffic Control Center who were fired by the FAA in August, 1981. Also joining us as technical advisors are Mssrs. Len DeHainaut, Patrick West and Roy Bozych, who are former controllers at the Chicago Center.

At the outset we would like to summarize the reasons we believe the Chicago Center cases should shock the conscience.

First, these controllers have been barred from their profession for five and one half years and yet to this very day not a one of them has been given the identity of the FAA official who accused them of participation in the strike or of being absent without leave during the strike.

Over the course of two MSPB hearings, one in 1982 and the other in 1984, during months of investigation, including the taking of depositions of approximately 25 FAA supervisors, managers, and other employees, the FAA did not identify a single witness who even claimed to have personal knowledge of any facts necessary to support the charges against any of these controllers.

Considering the fact that various provisions of the Civil Service Reform Act required the FAA to prove its charges against each of these controllers by a preponderance of the evidence, it is difficult to imagine how the Chicago termination actions were sustained in the total absence of testimony from witnesses having personal knowledge of the facts. We can only explain it in terms of what our own investigation produced: (1) evidence of an outrageous scheme by FAA officials to fabricate and alter documents which were passed off as business records; and (2) an equally outrageous intransigence of the MSPB in the face of overwhelming evidence of the FAA officials' misconduct in these cases.

The apparent object of the evidence-tampering scheme was to convince the MSPB that the Chicago Center had maintained, in the ordinary course of its business, time and attendance records which would demonstrate that (a) a particular controller was scheduled for duty on a date he was charged with witholding his or her services; (b) that his supervisor, who had personal knowledge of the controllers' schedule, including knowledge of who was excused from duty or on leave, had noted the absence and recorded the controller as AWOL; and (c) that the recorded AWOL was made contemporaneously with the date shown on the document.

Copies of these fabricated business records were ultimately assembled, officially certifed as true and accurate by the FAA's Regional Director of Employee and Labor Relations, and submitted to the MSPB as evidence. These documents formed the sole evidence introduced against these Chicago Center Controllers.

At the first MSPB hearing on these cases in November, 1982, the Chicago Center Chief, George Gunter, testified under oath that the copies of the time and attendance records of the Center which had been submitted as evidence represented records compiled in the ordinary course of business. When testifying, Gunter was unaware of the fact that the controllers had obtained copies of some of the records as they appeared in a prior stage of the alteration process.

Just prior to being confronted with this second version of the agency records, Gunter testified a second time that the documents submitted in evidence represented the records which the Chicago Center kept in the regular course of business. Gunter specifically denied that he or anyone else had altered or changed these records.

The Chicago Center Evaluations Officer, Robert Miller, the man who would later be identified as the "general" in charge of the "War Room" (FAA's term) in which the massive evidence tampering activity took place, was present at the agency's counsel table as the FAA's technical advisor when Gunter made these sworn representations concerning the agency's evidence.

Even after Gunter was initially confronted with documents which demonstrated that the Chicago Center records had been altered, he persisted in being less than candid about the evidence tampering scheme.

For example, Gunter initally attributed the changes in the records to some sort of "updating" process which was performed by the personnel department, under the direction of Mr. Richard Pender. The agency was asked to produce the personnel specialists who had altered the records. In explaining the agency's failure to introduce testimony from the personnel specialists, the FAA attorney subsequently advised the MSPB's Presiding Offical "... I have tried to find personnel specialists who would be familiar. Unfortunately, because there were several of them doing it, they did the work and can't really explain why they did it."

The Chicago Center, in August, 1981, had two employees in the personnel department. Mr. Richard Pender was the Personnel Specialist and his assistant was Constance Guglielmi.

In July, 1984, both Mr. Pender and Ms. Guglielmi were deposed by the controller's attorneys. Both of them swore they had nothing to do with the alteration of the Chicago Center records.

Gunter made several other conflicting statements about the altered records at the first MSPB hearing. At one point he suggested that the explanation for the differing versions of the same record was that they represented simple "mistakes". At another point he suggested that the Center had maintained records which had to be revised within a few days after the dates shown. Then, when confronted with evidence that the records were changed after the controllers' had made oral replies to the charges, Gunter inexplicably stated that the Chicago Center had not even maintained the records originally.

Most significant, Gunter never disclosed his knowledge that Robert Miller was in charge of the alteration scheme and never identified the persons he knew were involved with Miller.

The first MSPB hearing ended with the Chicago Center's altered records - the sole evidence introduced against these controllers - in an unexplained state.

Incredibly, the MSPB's presiding official sustained these removal actions on the basis of the "contested evidence". The rationale for this result may become a classic.

After acknowledging that the Chicago Center altered documents comprised the sole evidence against these controllers, the MSPB presiding official found:

> Mr. Gunter was unable to explain the "discrepancies" between these two sets of sign-in logs other than to make a vague statement that the file copy logs were "updated", and through a series of events at the hearing - no other evidence has been made a matter of record concerning when (if ever) the file sign-in logs were changed, who changed them, for what purpose they were changed, and which sign-in logs are more accurate. (Citations omitted.)

The presiding official had, throughout the hearing, warned the agency attorney, both on and off the record, that the agency had better introduce testimony to explain the alteration of its evidence. The FAA refused to do so. In the subsequent decision he found the lack of evidence on this point as a factor which added to its probative value:

> In view of the lack of evidence which would show that some of the file copy sign-in logs were "doctored" for specific purpose, I am unable to conclude that they were altered by the agency in an improper attempt to influence the outcome of these proceeding, and I find that they cannot be totally disregarded as probative evidence.

Besides, the Presiding Official stated, finding for the controllers "...would be tantamount to pretending that a strike did not exist at the Chicago Center."

The MSPB initial decision was appealed to the 3-member Board in Washington. The Full Board reversed the decision but not the removal actions. After noting that George Gunter had contradicted himself, that the altered documents were insufficient, and that the

FAA had failed to explain the alterations after being given numerous opportunites to do so, the Board remanded the case for a second hearing on the issue of the altered documents.

* * *

In preparation for the remand hearing, the FAA submitted pleadings and affidavits which demonstrated a remarkable shift in position.

For example, atlthough the Chicago Center Chief, George Gunter, was the only witness it put on the stand at the first hearing to "authenticate" its altered documents as business records, the FAA took the position, on remand, that Gunter had so little knowledge of these records, and the alterations made to them, that it did not intend to even call him as a witness at the second hearing.

The FAA submitted an affidavit from Robert Miller, which claimed that Miller was responsible for the alteration process. The FAA pleadings specifically represented that Mr. Gunter had no knowledge of the alterations and that only Miller could explain them. The Board accepted these representations and Miller testifed at the remand hearing whereas Gunter did not.

Two years later Miller would submit another affidavit in another case which asserted that Gunter not only knew about the alteration of the records, he specifically directed Miller to take charge of it and told him how he wanted it done. Another affidavit, signed by the former Deputy Chief of the Chicago Center, Henry French, asserted that French personally observed Gunter tell Miller to alter the records. French served as the FAA's technical advisor in the remand proceedings.

In preparation for the remand hearing, the controllers moved for production of all original and non-identical copies of the relevant watch schedules, sign-in logs and time and attendance reports. The agency vigorously resisted this motion. As to the time and attendance records, for example, the agency claimed that the original documents were in Kansas City and that it would be burdensome to require the agency to produce them. After the MSPB ordered the agency to produce them, the agency claimed that the originals had been destroyed.

Similarly, the controllers had moved for production of the Chicago Center's "swap books" and "spot leave binders", which were support documents necessary to make sense out of the watch schedule. The agency failed to produce these records, stating that they were not required to be maintained and, besides, they "do not exist". At the hearing, two FAA supervisors confirmed that the documents did exist and they were necessary to determine the schedules of the controllers. Robert Miller admitted, at the subsequent hearing, that these records were also destroyed.

The agency was also ordered to produce both "orignals" and non-identical copies of the watch schedules and sign-in logs. The "originals" proved to be yet another version when compared with the two versions which surfaced at the first hearing. Morever, there was nothing original about these documents as they contained hundreds of alterations. Some of the "originals" represented evidence which was completely fabricated and back dated to make it appear as if it were original.

The number of "non-identical" copies of these supposedly identical records was startling. For what were supposed to be 175 watch schedules, the agency produced 22,811 pages of non-identical copies. For what were supposed to be a total of 1239 sign-in logs, the agency produced a total of 20,657 non-identical copies. Although many of the differences in these non-identical copies were insignificant, there were numerous instances of material differences which resulted in there being as many as six materially differing versions of what was supposed to be a single business record. Of even greater importance, the agency never produced, in any form, originals or photocopies, of any record which would have shown what this evidence looked like prior to the four month alteration process.

We took depositions of approximately 25 Chicago Center supervisors prior to the remand hearing. The supervisors universally expressed surprise at what happened to these records. They universally testified that they had not made the key "AWOL" entries on the logs for their areas. The supervisors universally disclaimed any knowledge of the identity of the individuals who altered the records. They all said they were not consulted about the alterations, even when the alteration involved the obliteration of the original, "Annual Leave" status and the substitution an "AWOL" status -- after the controllers were fired. The supervisors confirmed that in the ordinary course of business at the Chicago Center, they were the ones who made a determination of whether an employee in their respective area was "AWOL" and that they were the ones who recorded the "AWOL" on the logs. However, they repeatedly denied any knowledge of the "AWOL" entries on the agency's evidence.

MSPB REMAND HEARING

The sole purpose of the full Board's remand order to the presiding offical was to determine the circumstances of the creation of the documents, and to adjudicate the probative value of this "evidence" under the Board's Borninkhof hearsay test. This test basically asks four things: Who is the declarant (accuser) on the relevant entries? Did each declarant sign and swear to the truth of the entries? Did the declarant have personal knowledge of the truth of the entry? When were the entries made?

The FAA never answered any of the essential questions. The "makers" of the key "AWOL" entries were never identified. Without identification of these FAA officials, the Borninkhof analysis was impossible. The entire purpose of the remand was thwarted.

On the other hand, the hearing did apparently demonstrate conclusively who were not the declarants. The area supervisors - the only ones having the requisite personal knowledge of their subordinates schedules, leave status, etc. - universally disclaimed making the key entries, as they had in depositions, and no FAA witness challenged their testimony.

This related to the official evidentiary "adverse action" files that are supposed to be kept by Federal agencies and transmitted to the MSPB if an employee challenges his or her termination pursuant to statute. Part of these files is a category called "material relied upon". It is supposed to consist of the material relied upon by an agency official who proposed to fire an employee. If the employee's response to that material is considered inadequate it also consists of the material relied upon for the termination. During cross-examination of War Room General Miller, it was uncovered that, after controllers had responded to the charges in the original "material relied upon" to propose their termination, altered and manufactured "material relied upon" was substituted in the official evidence file and sent to MSPB without the controllers knowing this. The agency attorney ultimately stipulated to the substitution of the altered evidence for the originals, apparently to cut off further cross-examination of Miller on the issue.

After this substitution process was uncovered, the agency was requested, in open court, to produce the original evidence which had been removed from the MSPB files. Without hesitation the FAA attorney replied that the agency no longer had the original evidence. It had been destroyed.

Having established that the original facility records, the "material relied upon" by the FAA to fire the controllers was destroyed, the controllers moved for immediate dismissal of the agency's case. In light of these admitted facts, the examination and comparison of the many differing versions of the Chicago Center records would be a needless exercise in futility. The MSPB Presiding Offical deferred his ruling, remarking that he would carefully consider it in this decision. (The subsequent decision did not even mention the motion or the agency's admissions that the original records were destroyed).

Because the FAA successfully achieved it's purpose, i.e., that the alteration process was to make the altered entries appear to be original business entries -- even the FAA witnesses could not distinquish a genuine operational entry from a subsequent fake. Miller, the FAA offical who supposedly headed the evidence tampering, was challenged several times to distinquish the original entries from the altered ones and he repeatedly admitted that even he could not now tell the difference. Ultimately Miller was constrained to admit that "...no one, with the possible exception of God, could look at these evidence files and tell whether or not they are accurate."

Although the remand hearing evidence failed to answer any of the questions raised by the full Board remand order, the controllers uncovered much information going to the participants in the evidence tampering process, the location in the Chicago Center where this activity took place, and the time frame involved.

The War Room in which evidence tampering activity was accomplished in the Chicago Center was detached from the operational areas of the Center and this activity was intentionally kept secret from the working controllers, supervisors and area managers.

One of the participants in this activity testified that Chicago Center Chief Gunter indicated to him that "everything here (in War Room) is secret, keep it under your hat". All of the facility supervisors who testified, both at deposition and at the hearing, confirmed that they had never been advised about the activity in the War Room.

Many of the War Room enlistees shared common circumstances: (1) None of them was involved in either the scheduling of the controllers or in maintaining the controllers' time and attendance records at any time prior to their "War Room" activity; (2) most of them were not even FAA employees when the recorded events occurred;

(3) none of them had any basis for personal knowledge concerning the truth of the alleged operational entries they were making; (4) they did not consult with the supervisors who did have personal knowledge regarding the entries; (5) their activity was limited to MSPB evidence against the fired controllers. War Room enlistees included on a temporary basis Miller's wife and at least one social friend of his.

The time frame of the War Room activity ran from mid-August, 1981, until the first or second week in December.

The record was unclear as to the extent of the evidence tampering. One War Room enlistee, who started making altered entries two months after the dates shown on the documents, said he made changes to all three types of timekeeping records (watch schedules, sign-in logs and T & A Reports). He estimated making about 300 changes to the records, but added that he could have made as many as 3,000.

In some cases the tampering activity involved the complete manufacture of a document, backdated and made to appear like an original record.

One enlistee testifed that for a 2-3 week period in September, 1981, he was working in a separate room of the Chicago Center. He described taking "blank" sign-in logs from a stack, placing controllers' names and "AWOL" on them, and backdating them to make it appear to be an operational record made a month before. He testified that Miller directed him to do it. Miller testified he did not direct this enlistee to fabricate these logs. Miller swore he did not even know that it had been done. When confronted with Miller's denial, the enlistee insisted Miller told him to do it (" I swear to God") and said he personally turned the manufactured evidence over to Miller.

Another War Room enlistee testified that Miller directed him to prepare a "re-creation", a completely fabricated watch schedule for Data System Specialist personnel. He said that he complied and, as a result, completely bogus documents were submited as evidence. Miller denied that he directed this person to fabricate these records.

There was also significant evidence that someone attempted to perpetrate a fraud on the MSPB by using Miller's signature stamp on the reverse side of the sign-in logs, in order to fake a "certification".

As noted above, the full Board's remand order had directed that the records be subjected to the Borninkhof hearsay analysis. The second and third parts of that test look to whether the document is signed, certified or sworn to.

It appears that someone believed that he could succeed in this endeavor because the original FAA evidence submitted to the MSPB in 1981 involved only photocopies of the "T and A" side, not the certification side.

The scheme failed because the ink on this signature stamp bled through to the opposite side of the document. Thus, controllers were able to demonstrate that none of the FAA's 1981 documents showed the bleed-through. Only the supposedly identical records submitted at the remand hearing had these decisive markings. That is, the stamp must have been used long after the "evidence" was first copied and submitted to the MSPB.

Miller admitted that it was his personal stamp that was used, but claimed that the War Room enlistees were the ones who applied his signature stamp to the records. All of those identified by Miller -- including his own wife -- refused to agree with him. All of them denied using the signature stamp on any record. All of them swore that they never saw the signature stamp in the War Room. Miller's wife said that he kept the signature stamp at his home.

When confronted with these contradictions, Miller said that he was surprised at the testimony of the other War Room participants and that he didn't intentionally lie.

Following this testimony at the end of the fourth day of the remand hearing, the presiding official went to the cafeteria of the Federal building, where the attorneys for the FAA and controllers were meeting to discuss possible stipulations. In the presence of the controllers', the presiding official told the FAA attorneys that he was extremely disturbed at what had been disclosed and he suggested to the FAA that they settle these cases.

The hearing was adjourned for four days in order to promote settlement. The FAA representatives indicated to the controllers' attorneys that they would have to obtain authority from Washington. On the third day the controllers' attorneys were advised there would be no negotiation.

When the hearing resumed, the controllers' attorneys asked, in open court, whether the FAA was going to produce a single witness who would admit to placing the stamped signature on its evidence. The FAA attorney replied, "I have no intention of producing anybody to that effect".

As promised, the FAA made no attempt whatever to explain this attempt at forgery and false certification. (The subsequent MSPB remand decision totally ignored this evidence.)

Another significant issue concerned the original certification of the Chicago Center's altered records by the FAA's Regional Director of Employee and Labor Relations, Richard Shewfelt.

Mr. Shewfelt had certified to the MSPB, in November, 1981, that the copies of the Chicago Center records submitted as evidence represented "true copies" of the "material relied upon" by the agency.

By the agency's own admissions and testimony, the "material relied upon" was sent to the Region, in Shewfelt's custody, in the second week of September, 1981. It was also demonstrated beyond any doubt that the Chicago Center's altered documents, the products of the "War Room" were substituted for the "material relied upon" in October, November and December, 1981, long after Shewfelt had custody of the evidence. Finally, the agency's own attorney conceded that the documents representing the "material relied upon" was destroyed.

In spite of all of the testimony and evidence concerning what happened to the records in Shewfelt's custody, Shewfelt steadfastly insisted that he had no knowledge whatsoever that it was going on. Shewfelt said he was unaware of the evidence tampering, knew nothing about the War Room activity or the substitutions of records in his own office. He went so far as to say that if it happened, it was improper; and if he had known about it he never would have certified these records to the MSPB.

* * *

The MSPB Presiding Official issued his decision to affirm the removal actions on December 17, 1984. The decision did not refer to the record transcript on the altered document issue in a single instance. On July 5, 1985, the full Board denied the controllers' petition for review.

* * *

Mr. Chairman, all of the foregoing representations of fact were derived from the transcripts and evidence of record. If requested to do so, on any or all of these statements, we would be happy to provide the relevant citations to the record.

We shall be pleased to answer any questions the Subcommittee may have.

Mr. OBERSTAR. The subcommittee will stand in recess until 9:30 a.m. tomorrow.

[Whereupon, at 12:31 p.m., the subcommittee recessed, to reconvene at 9:30 a.m., Wednesday, March 11, 1987.]

EXAMINING CIRCUMSTANCES SURROUNDING THE 1981 FIRINGS OF AIR TRAFFIC CONTROLLERS AT THE CHICAGO AIR ROUTE TRAFFIC CONTROL CENTER

WEDNESDAY, MARCH 11, 1987

U.S. House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2167, Rayburn House Office Building, Hon. James L. Oberstar (chairman of the subcommittee) presiding.

Mr. Oberstar. The Subcommittee on Investigations and Oversight will come to order. Please be seated.

Yesterday the subcommittee continued its investigation into the 1981 firings of air traffic controllers at the Chicago Air Route Traffic Control Center. We heard astonishing testimony from three lawyers who have represented a large number of controllers from the Chicago Center in the various legal proceedings. The allegations they raised are serious, and members of the subcommittee are left with many unanswered questions. Today we will have the opportunity to find answers to those questions.

The witnesses who will be appearing before us are the ones who are in the best position to provide us with the answers because they are the ones who were responsible for and oversaw and directed the process which has been the source of the controversy before us.

Yesterday I said, and I want to repeat, we are not here to look into the nationwide matter of firing of controllers nor the policy that underlie that decision. We are not here to retry the individual cases of controllers who have been fired. We are here to examine the events that unfolded in Chicago during that period of time, August 1981 over the period of the next several months and even years, in the administrative process behind and substantiating and underlying the firing of the controllers.

Contrary to the view of FAA Administrator Engen, I think it is important for the subcommittee to be conducting these hearings. If individual rights were compromised, set aside, trampled upon, in a Federal agency by FAA officials and if those officials intentionally, as alleged, misled the Merit Systems Protection Board, it doesn't matter how long ago that happened. Whether it was five-and-a-half years, five-and-a-half months or five and a half days ago, Congress must not ignore allegations of misconduct by Federal officials simply because a particular number of years or period of time has elapsed. Despite Administrator Engen's belief, the problems of today do not erase the mistakes of yesterday.

Furthermore, the FAA Administrator seems to imply that because the actions taken by Chicago officials were litigated before and upheld by the Merit Systems Protection Board, a congressional review is unnecessary. Well, suppose the U.S. Court of Appeals rules in favor of the controllers. Do the actions by FAA officials suddenly become improper and then worthy of scrutiny by Congress?

It is disappointing, frankly, that the Administrator did not withhold his judgment until after our inquiry is completed. The subcommittee has had the opportunity to review documents that were never brought up in proceedings at the MSPB. Therefore, the hearings of this subcommittee may be able to provide a more accurate picture of what occurred, both for the Congress and for the Administrator.

It is our hope that today's witnesses will help us get to the truth. To do so, witnesses must be able to explain the apparent inconsistencies and discrepancies that have been uncovered by the subcommittee in the course of our seven-month-long investigation.

The Chair recognizes the gentleman from Pennsylvania.

Mr. CLINGER. Thank you very much, Mr. Chairman.

Today, as you have indicated, the subcommittee meets to continue its hearings on the firings of air traffic controllers in the FAA's Chicago Air Route Traffic Control Center following the PATCO walkout on August 3, 1981. Specifically, the subcommittee will be examining the means by which personnel at the Chicago Center and the Great Lakes regional office prepared, reviewed, amended, and processed the documentary evidence used to support those firings in hearings before the Merit Systems Protection Board [MSPB].

Yesterday the subcommittee did receive testimony from three attorneys for controllers fired from the Chicago Center. Those lawyers represented their clients in administrative appeals before the Merit Systems Protection Board and in some cases continued to represent fired controllers in appellate proceedings in the Federal courts and in related civil matters.

The lawyers told a tangled tale, sometimes related in very strong terms, of actions taken by certain FAA officials at the Chicago Center and the Great Lakes Regional Office to ensure that Chicago Center Air Traffic Controllers, once fired, remained fired. Lawyers told of falsification, alleged falsification of scheduling, attendance and pay records, of efforts to conceal the nature and extent of those actions. They told of Chicago Center officials' inability to explain under oath contradictions in physical evidence and prior sworn testimony. These are serious charges.

Our job today, aided by the testimony of four of the central figures from the Chicago Center and Great Lakes Regional Office, at the time immediately following the strike, is to sift through those allegations and other matters, to sort out fact from fiction and hard evidence from hyperbole, in an attempt to discover the truth of what actually did happen.

If, in fact, there was no wrong-doing, our witnesses have the opportunity this morning to set the record straight in their statements and in responses to subcommittee questions. It is our intention to be forthright, fair, and thorough. If there is any shred of information on any issue that will be raised during the hearing this morning which is unexplored by the subcommittee's questions and which will help us arrive at the truth, I hope that the witnesses will not hesitate to bring it out.

I mentioned in my opening statement of yesterday's hearing that the subcommittee will not be swayed by style or sensationalism but by substance. Our witnesses today are in the unique position of being able to provide us with the substance which is the reason they have been asked to testify this morning. Because of their past responsibilities and actions, they know what occurred during the admittedly very hectic times immediately following the 1981 PATCO walkout, and I look forward to their sharing that knowledge with us.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you, Mr. Clinger.

Mr. Molinari.

Mr. MOLINARI. Thank you, Mr. Chairman.

Mr. Chairman, I would like to pick up where you left off in your opening statement with respect to Admiral Engen's letter. I take affront at the fact that he is distressed that we are conducting these hearings. The fact is that following the strike in 1981, there were large numbers—dozens, scores, in fact, hundreds—of controllers who were improperly fired, who lost their jobs, and through the appeals process got their jobs back. The numbers, if you try to get the numbers that come back into the system, there again we get different sets of figures. Admiral Engen sent the committee a statement saying it was 700-some-odd. Subsequent to that, we received a statement from Admiral Engen listing 550.

The fact of the matter is that a number of men and women who worked as controllers in the system were discharged and terminated from their jobs improperly. And the fact is that a much larger percentage occurred at Chicago Center. Why? Why did Chicago Center wind up with a set of statistics that were twice as bad, in my judgment, and the numbers of returnees throughout the appeals process twice as great as that which occurred throughout the system?

I hope—and these are the people that were in charge at the time—I hope that you are going to provide us with the answers. It is long overdue.

Mr. OBERSTAR. I ask all witnesses to rise and raise your right hands.

Do you solemnly swear that the testimony you will give before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

[Chorus of "I do's."]

Mr. OBERSTAR. Thank you.

TESTIMONY OF GEORGE GUNTER, TRAINING SUPERVISOR, ROBINSON, VAN VUREN & ASSOCIATES, FREMONT, CA, ACCOMPANIED BY ALBERT B. RANDALL, COUNSEL; ROBERT L. MILLER, ASSISTANT MANAGER, PLANS AND PROGRAMS, CHICAGO AIR ROUTE TRAFFIC CONTROL CENTER, AURORA, IL, ACCOMPANIED BY PERRY A. KUPIETZ, COUNSEL; DAVID ERICKSON, MANAGER, QUALITY ASSURANCE STAFF, FAA GREAT LAKES REGION HEADQUARTERS, DES PLAINES, IL; AND RICHARD P. SHEWFELT, MANAGER, EMPLOYMENT BRANCH, FAA GREAT LAKES REGION HEADQUARTERS, DES PLAINES, IL

Mr. OBERSTAR. Mr. Gunter, we will begin with you and we will move left to right across the table. I note that each witness has a prepared statement except for the attorneys Mr. Randall and Mr. Kupietz. So we would like you to, if you wish to summarize your statement, the entire statement will appear in the record, or you may summarize, or if you choose then to read the entire statement, you may.

I would like to welcome Mr. Erickson back before the committee. We met in Chicago last summer, and Mr. Kupietz as well, who participated in the committee's executive session at the Chicago Center.

Mr. GUNTER. Thank you. Mr. Chairman, I would like to read my statement, please.

Mr. OBERSTAR. Would you pull the microphone up a little closer, please?

Mr. GUNTER. Okay.

Mr. OBERSTAR. Thank you.

Mr. GUNTER. Mr. Chairman, and members of the subcommittee, I am George Gunter, former manager of the Chicago Center. I am currently retired from the FAA and am employed as the supervisor of training at the Oakland Center. At the time of the strike, I was the manager of the Chicago Center.

With regard to the subcommittee's interests in FAA activities prior to the commencement of the strike, my recollection is that there had been various briefings concerning the agency actions to been taken and plans had been established. I do not have specific recollection of these, but I believe that they in general dealt with such things as our operational response to the strike in terms of handling air traffic and the advice we were to give to controllers that striking was illegal and that, in the event of a strike, leave would be cancelled.

To the best of my knowledge and recollection, this guidance was directed not just at the Chicago Center but at air traffic facilities generally within the Region, and came either from the Regional office or headquarters.

More than 80 percent of the air traffic control personnel at the Center were removed for their participation in the strike. The impact on the facility was severe, although we took actions to safely handle the air traffic.

The proposed removal letters for the controllers who did not appear for their deadline shifts were prepared by the facilities personnel office. Given the magnitude of the paperwork associated with this process, we needed a separate room in which to organize and review all of the records necessary for their oral replies and the adverse-action files. That room came to be known as the "war room."

I requested a number of individuals to help with the administrative work which needed to be accomplished. To the best of my recollection, individuals who were involved in the administrative work associated with the processing of these cases were: Bob Miller, Dave Erickson, Dick Pender, Ray Cullerton, Pete Peterson, and Clyde Campbell. Again, to the best of my recollection, Beverly Miller was involved primarily in copying and putting files together.

I reviewed each controller's file before I made a decision as to whether to continue with the removal action. If in reviewing the document I noted a discrepancy, I would give the document to one of the personnel in the so-called war room for them to follow up and determine what the correct information was. I do not recall having asked Mrs. Miller or Mr. Campbell to do this.

I wanted to make sure that the timekeeping records were accurate. If a record indicated the wrong shift for a controller or if it showed someone on leave when I determined that the leave had been cancelled, the document was changed to reflect the correct information.

In reviewing each case before making my decision, I examined the watch schedule, the sign-in logs, and the replies to the proposed removal letters. Although I cannot recall the specific cases, there were several occasions in which I, in fact, made a decision to withdraw proposed removal letters after I reviewed all the pertinent information.

The administrative work in the war room was done at my general direction, although I clearly was not involved in every detail of what everyone was doing there. During the process of reviewing the records and making my decisions, I do not recall having any conversation with Mr. Shewfelt or other individuals in the labor relations office.

With regard to oral replies, it is my recollection that the hiring of oral-reply officials was arranged through the regional office. The replies were heard at a location away from the facility.

I met with the oral-reply officials as a group at the beginning of the oral-reply process. At that time, I gave general advice to them, including that they were to listen to the presentation of the controllers to document or summarize their statements and make recommendations. I did not intend to limit the authority of the oral-reply officials. However, I was the only official who had the authority to make a final decision as to whether an employee would be removed.

Throughout this process, we attempted to ensure the accuracy of the records and to review each case on its own merits. Mistakes were made in this process, and I would like to acknowledge that fact, although I would make clear to the subcommittee that I did not intend in any respect to improperly change records nor do I have any belief that any of my employees were improperly motivated in any regard.

Later review of annual leave cases by others also determined that in some cases we had not properly cancelled leave or that there was insufficient evidence to support the cancellation of leave. Clearly, those decisions represented errors on our part.

With the tremendous work load imposed on facility personnel by the PATCO strike and the associated removal cases, our recordkeeping practices were, in some respects, simply not as good as they should have been. Sign-in logs should have been maintained on a current and correct basis better than they were.

I can assure you, though, that my concern throughout this process was to make the proper decision in these cases based upon a review of all the available evidence. I believe the fact that I reached a conclusion in some cases that removal was not warranted should highlight that fact.

In closing, Mr. Chairman, I would reiterate that my staff and I made mistakes in dealing with records associated with the removal cases. But they were mistakes which did not represent in any manner an effort intentionally to deceive anyone. That completes my prepared statement, Mr. Chairman.

Mr. OBERSTAR. Mr. Miller, you may proceed.

Mr. MILLER. Thank you, Mr. Chairman. Mr. Chairman, and members of the subcommittee, I am Robert Miller, assistant manger, plans and programs, at the Chicago Center. I have been employed at the Chicago Center since 1960. I have been employed with the FAA since 1957. At the time of the PATCO strike, I was a Center Evaluations Officer.

Before I describe my involvement with the recordkeeping process during the strike, I would like to briefly explain the timekeeping documents which the subcommittee is examining.

The watch schedule is the official document which sets forth the controller's shift assignments. There is a separate schedule for each area of the facility. At the time of the strike there were seven areas. The schedule is posted in the pertinent facility area several weeks prior to the time period which the schedule covers. All subsequent changes to a controller's shift assignments should be depicted on this document. These schedules routinely undergo many changes as controllers swap shifts, request spot leave, or are reassigned for staffing purposes. The changes are noted on the schedule by the supervisor.

The sign-in logs, or 304's, apply to particular areas of the facility for particular shifts. These logs are based upon the watch schedule and are normally prepared prior to the shift by a supervisor who enters the printed names of the controllers who are scheduled to work that shift.

Controllers use the logs to determine their position assignments. They sign their names on the logs next to the printed name and they enter the time they begin and end their duty.

The sign-in logs are also documents which in their ordinary usage are changed in order to accurately reflect a controller's shift assignment and status. For instance, it sometimes occurs that a supervisor makes an error and omits printing the name of the controller on the log. When the controller appears for work, the controller still signs on the log, and his or her printed name is subsequently added.

A controller must sign the log in order to get paid, because it is the log and, in particular, his or her signature which reflects his or her presence on duty.

Further, if a printed name is inadvertently placed on the wrong log by the supervisor, the supervisor will cross out or erase the incorrect entry and place it on the proper log when the error is found.

Another type of change may involve the status of a controller. For instance, annual leave may be changed to sick leave or AWOL may be changed to annual or sick leave upon the controller's explaining his or her absence and having it approved by a supervisor.

The log may also be changed if a controller calls in sick. The sign-in logs are used to complete the time-and-attendance report, or T&A, which is a document generated for payroll.

In general, the method by which the sign-in logs were generated and used at the center did not change for about the first ten days of the strike. These documents were prepared prior to the shift and the controllers who reported to work signed in and out.

However, after August 12 or 13, when most, if not all, of the controllers had already missed their deadline shifts, I as the acting chief of the facility advised the supervisors that separate logs could be maintained for those controllers who had not come to work and those who had come to work. This was done to relieve the administrative work load on the supervisors. Many of the logs for dates beginning August 12 or August 13 for the controllers who had not appeared for duty were completed later by administrative personnel or the supervisor if they had time. As the strike progressed, the preparation of the logs for the controllers who had not come to work was taken over by administrative personnel.

During the second week of the strike, Mr. Gunter, the Center chief, directed that we designate a particular room to use for compiling the records needed for processing the personnel cases. We used the old PATCO office for that purpose.

In compiling the records for the oral replies for the chief's review and for adverse-action files, we wanted to make certain that the documents were accurate. We therefore reviewed the logs along with the watch schedule. Due to the operational burden on the supervisors, the logs contain more errors than usual. Most of the errors we found involved names which were on the wrong log or simply left off the correct log. If we saw an error, we would correct the log. Since so many controllers participated in the strike, the errors which would have been ordinarily brought to the attention of a supervisor on the floor and corrected were not noted until we later reviewed the records.

Also involved in this review process were Mr. Dave Erickson, Clyde Campbell, Pete Peterson, and Ray Cullerton. We used the watch schedule to ensure that the printed name of the controllers appeared where they belonged on the logs. These individuals were responsible for checking the accuracy of the records and for organizing and compiling them for each controller. We reviewed records covering time periods before and after the deadline shifts for the controllers.

At no time during this process, to my knowledge, were any signatures erased from any log. Further, no changes, to my knowledge, were made to the shift assignments, as depicted on the watch schedule of the controllers who did not show up for work. These two facts are important. The watch schedule told a controller when to report for work, and the log revealed whether the controller appeared for duty.

An additional type of amendment that we made to the sign-in logs involved the leave status of certain controllers who originally were shown as being on approved annual leave. If it was determined by reason of statements read to the controllers before the strike, contacts with the controller during the strike, or other data, that the leave was cancelled, we would amend the sign-in log to reflect this determination.

As I recall, we would show the available documents to the center chief, and if he determined that leave had been cancelled, he would advise us to show that cancellation on the log.

With respect to the inconsistencies noted in the log, this occurred because the sign-in logs were being reviewed and copied for each controller separately. Copies of the records had to be made for the oral replies and for the files to be sent to the region. During this review, if we determined that the sign-in log failed to list the controller's printed name or a name was listed for an incorrect shift, we changed that particular record to add the printed name or note the correct shift. Therefore, copies of some of the sign-in logs made during this process were inconsistent with other copies that were made.

Inconsistencies also arose from changes to these records concerning leave cancellation. To the best of my knowledge, neither the Regional office nor FAA headquarters was involved in the details of our recordkeeping process, although general guidance was received from regional personnel on the overall processing of the adverse-action cases.

The T&A's for many of the controllers were often amended in order to make them factually correct. As I recall, the vast majority of amendments were made for pay periods after the employee's deadline shift. The administrative burden on the Center was tremendous, and our T&A clerk was absent for a period of time due to a death in her family. Amended T&A's were then forwarded to the Labor Relations branch. I recall placing three amended T&A's in the adverse-action file in the Regional office.

Our intent throughout the entire process was to ensure the accuracy of the records, to reflect each controller's shift assignment and leave status. Nevertheless, in hindsight it is readily apparent that mistakes were made. For example, there were cases in which we considered annual leave to have been cancelled, while others reviewing the file at a later date concluded that the facility had not taken the necessary steps to cancel the leave, or that the evidence to prove such cancellation was not sufficient.

I believe it is also fair to say that the process in which the changes I described were made to the sign-in logs in a number of respects constituted a mistake on our part which we would not repeat today. Without belaboring the point, I would note that we were faced with a tremendous work load, and despite our best efforts to do everything correctly, we did not. I can assure you, however, that there was never any intent to falsify documents or improperly change them.

Mr. Chairman, this completes my statement.

Mr. OBERSTAR. Thank you, Mr. Miller.

Mr. Erickson, you may proceed.

Mr. ERICKSON. Thank you, Mr. Chairman, members of the subcommittee. I am David Erickson, manager of the quality assurance staff of the Great Lakes Air Traffic Division. My responsibilities in this position include facility evaluation, accident investigations, and reviews of operational errors.

I was first employed at the FAA Chicago Air Route Traffic Control Center in 1963 as a controller. In 1975 I became an area specialist at the Center, and in late 1976 I transferred to the Regional office as an evaluation specialist.

At the time of the PATCO strike on August 3, 1981, I was employed at the region's Cleveland Center as an assistant chief. I transferred to the Chicago Center on August 9, 1981. During my first week of employment at the Center, I was in charge of the facility's east wing area of specialization. After about a week, the facility manager requested that I help with the administrative work load related to the adverse actions being processed against the controllers who had struck.

During the seven or so weeks which followed, I worked in what had formerly been the PATCO office, which was called the war room, and which was the office we used to compile and review the necessary documents regarding the adverse actions being processed within the facility.

My role in this process was very limited. My primary responsibility, as assigned to me by the manager, was to review the oral or written replies which the controllers made to their proposed removals. If these replies indicated that a controller was alleging that he or she had a specific conversation with a facility official, I would contact the official indicated and ask for a statement regarding the conversation. Following that, I would see that the statement was typed and signed by the supervisor. I would then bring the statement to the attention of the Center manager.

I obtained this information in order to determine the accuracy of the statements made by the controllers responding to the proposed removals. This information was then brought to the attention of the deciding official, who was the Center manager.

As it is now five-and-a-half years after these events, I simply cannot recall the specifics of the cases involved or, for that matter, specific details of this process, other than to note that my responsibility was simply to obtain these statements and show them to the manager.

While in the war room, I did not make any changes to any of the watch schedules nor did I observe anyone taking such action. Likewise, I did not erase any signatures from the sign-in logs nor did I observe anyone else taking such action. Thus, to the best of my knowledge, the watch schedules were not changed, no signatures were ever removed from the sign-in log. The watch schedule is the document which sets forth the shift assignments for the controllers, and the sign-in log is the document which the controller signs when appearing for work. If the controller's signature is not on the log, it means that the controller was not present for his or her shift, assigned shift.

The only involvement I had with the sign-in logs was adding the printed name and letters "AWOL" for four controllers on several of the logs. In reviewing the logs, I had noted that these four names were omitted from the applicable logs. I made these few entries based upon the watch schedule, which revealed the shift assignment for these controllers. However, since their printed names had been inadvertently left off the sign-in logs by the personnel who had prepared them, I took action to correct the documents. I do not recall the specific date I made these entries.

I would briefly note that sign-in logs are often corrected or amended in order to make them accurate or complete. Changing logs for these purposes routinely took place before the strike and, I am sure, continue to this day.

In my use of the logs both before and after the strike, I have had occasion to add a printed name which was missing from a sign-in log; therefore, it was simply my intent to follow the normal recordkeeping process regarding these documents in ensuring that a controller's printed name appeared on the proper log. I understand now that these changes should not have been made and that to do so was a mistake on our part.

I would emphasize, however, that my actions regarding these few logs did not change the shift assignments or work status of the controllers. The four controllers whose printed names I entered on the sign-in log were scheduled to work, and the lack of their signatures reflected their absences from the facility. To the best of my recollection, one of the individuals had been previously scheduled for leave, which had been cancelled pursuant to a written statement from his supervisor.

In reviewing the documents, if I noticed a discrepancy between the dates cited in a proposed removal letter and a controller's schedule, I would bring it to the attention of the Center manager. I do not recall any specific instances, however. As stated above, my primary job was limited to obtaining written statements regarding conversations referred to in the oral or written replies.

The only other personnel I can remember being in the war room when I was there were George Gunter, Bob Miller, Ray Cullerton, Pete Peterson, Beverly Miller, and Michelle Klinkhammer. I was never specifically advised of who was in charge of the war room. As manager of the Center and the deciding official in the personnel cases, I assumed that Mr. Gunter was ultimately responsible for the war room. It appeared that Bob Miller oversaw the day-to-day administrative tasks involved in copying and compiling all of the documents.

The subcommittee has also asked me to briefly describe the events on July 24 and 25, 1986, at the Chicago Center. At that time, I was serving as acting manager of the Center.

On July 24 I was notified that a subpoena had been served by this subcommittee on the agency, mandating the production of a variety of strike-related documents retained in room 2025 of the Center. To assure the protection of these materials, we arranged for a security guard to control access to the room.

On July 25 the subcommittee held a closed hearing at the Center and received testimony concerning the security of the documents we were required to produce and how facility watch schedules and sign-in logs are used at Chicago center.

This completes my prepared statement, Mr. Chairman.

Mr. **Oberstar**. Thank you, Mr. Erickson.

Mr. Shewfelt, you may proceed.

Mr. **Shewfelt**. Thank you, Mr. Chairman, and members of the subcommittee. I am Richard Shewfelt, manager of the Employment branch of the FAA's Great Lakes Region. I have been employed with the FAA since 1975, at which time I worked in the Labor Relations branch of the Great Lakes Regional Office's Personnel division.

In 1980 I became chief of the Labor Relations branch, which is the position I held at the time of the PATCO strike in August of 1981. I now serve as manager of the Employment branch in our Human Resource management division. My current duties involve the oversight and administration of the hiring conducted by our Region.

As chief of the Labor Relations branch, my duties and responsibilities included representation of FAA management in its dealings with FAA labor unions and advising managers of our regional divisions and facilities on labor relations matters and employee discipline matters. My office represented management in Merit Systems Protection Board hearings, arbitration proceedings, and in unfair labor practice proceedings.

At the time of the strike I had a staff of approximately four labor relations specialists. Our jurisdiction covered eight States and about 75 air traffic facilities. About 2,700 air traffic controllers walked off their jobs and participated in the PATCO strike beginning August 3, 1981. It is my understanding that the number of striking controllers in the Great Lakes Region exceeded that of other FAA regions.

When the strike occurred, my office was responsible for assembling the appeal files which eventually were sent to the MSPB regional offices and to the former controllers who had appealed. We received orders from four MSPB regional offices, setting forth various requirements concerning the appeals process. The MSPB offices with which we dealt were those in Denver, St. Louis, Chicago, and Philadelphia. The regional boards' orders differed from each other with regard to certain aspects of our appeal file. We therefore had to secure compliance—excuse me—had to ensure compliance with the particular MSPB office which had jurisdiction over the case.

In general, the MSPB required that the FAA submit tabbed files, including such documents as the notice of proposed removal, the removal letter, the oral and written replies, and the evidence relied upon. In addition, the MSPB required answers to specific questions regarding each case.

Due to the extent of the strike, the work load in my office was enormous. The strike and removal actions were, of course, unprecedented, and we were confronted with a significant administrative burden. We therefore requested the assistance of personnel from other divisions to assist us in compiling the documents and assembling the files for the MSPB.

A large number of people assisted in this effort. We worked exceptionally long hours for seven days a week over a long period of time. Were it not for the tremendous dedication and sacrifice of these employees, we would not have been able to comply with the boards' deadlines.

Throughout the first several weeks of the strike, there were numerous telephone conference calls between regional office officials and the air traffic facilities in our region. To the best of my recollection, I did not speak directly to the Chicago Center personnel during this period.

Regarding the documents which the air traffic facilities were to provide, the advice given to all the facilities was the same. In general, the facilities were advised to submit documents to us for each of the controllers who was removed. These documents contained a number of materials, including the timekeeping records such as the watch schedules, sign-in logs, and the time-and-attendance reports.

I gave no particular advice to the Chicago Center regarding this process. To the best of my knowledge, the Center had the same instructions and requirements as our other facilities had throughout the region. I did not travel to Chicago Center during this period of time. I was not involved in any way with the recordkeeping process used at the Center or at any particular facility.

An issue seems to have arisen as to the existence of the so-called war room at the Center. Although I had no knowledge of the specific room which the Center was using to compile its documentation, I am sure that each facility designated a certain location where the pertinent data was to be organized.

After all, the removal of such a large number of personnel necessitated extraordinary measures to handle the administrative work as well as to keep the air traffic system operating safely. Therefore, the fact that the Chicago Center or any other facility set aside a particular room for the adverse-action process is not surprising.

However, my office was not involved with the specific procedures which the Center or the other facilities implemented to gather and review the required documents. Our concern was that the facilities send us accurate records of the material used in deciding to remove the controllers.

Once the records from the facilities started arriving at the regional personnel office where they were processed, our personnel reviewed the material in order to assure that the required documents had been submitted. This work was accomplished by my specialists as well as by the other employees who were assisting us in this process.

If certain documents were missing, it would be the responsibility of these people to obtain the missing data from the facility. For instance, if a facility submitted a file and forgot to include a copy of the controller's watch schedule, we would contact the facility and get the necessary document. Likewise, if a facility had sent a file which involved the wrong schedule, again the facility would be advised. Although I do not recall any specific instances when this happened, I would expect that on occasion the files we received had to be supplemented. The amount of paperwork involved in this process was tremendous.

Allegations have been made that Chicago Center or labor relations personnel added or substituted documents after the files had been sent to the region. While I have no knowledge that this occurred, there is not necessarily anything improper about this. All of the material requested by the MSPB had to be submitted so that we could copy the files and forward them in accordance with the board's orders. We were required to comply with the board's orders in our handling of these personnel cases. I did not alter or change any documents, and I am certain that no one working for me changed or altered any documents. No one advised the facilities to change their documents.

The critical part of the process from my perspective was to obtain copies of material relied upon by the deciding officials in reaching their decisions. We had no reason to alter or to ask anyone else to alter these documents. Naturally, if a file inadvertently contained the wrong log, such as the log for a different day or for a different area of the facility, the correct log would be obtained and we would replace the log which was inapplicable.

Thus, allegations of substitution of documents, which sounds sinister when made without knowledge of the process used, are misleading. Likewise, the transmission of additional documents to the Region after the files had been received by us would not have been inappropriate.

Today, in personnel cases totally unrelated to the strike, if the Labor Relations office in putting together an appeal file for the MSPB needs additional documents which the facility has failed to send us, we would routinely contact the facility and obtain the required data. This is a basic standard procedure. If a document initially sent to us by the facility did not apply to the employee involved, that document would be replaced with one that did apply to that employee. It would not have been appropriate for us to have intentionally sent incorrect information to the MSPB.

Given the number of controllers who participated in the strike, and the requirements of the MSPB to make several copies of each file, the volume of paperwork involved in our task was enormous. The documents we received from the air traffic facilities had to be reviewed, assembled, and tabbed packages in accordance with various board's orders and then duplicated several times.

The processing of the files from the Chicago Center by my staff was no different from our processing of thousands of files received from all of the air traffic facilities in our region. We gave no specific or unique instructions to the center. We were not involved in the actual recordkeeping process, including the preparation and maintenance of the records of any facility.

Moreover, we reviewed, copied, and submitted to the MSPB all of the strike-related files from our Region, using essentially the same procedures we have used before and after the strike. The magnitude of effort involved in this task was tremendous. I would add that the people who worked for me during this time were highly dedicated, professional employees who worked very hard under very arduous circumstances.

That completes my prepared statement, Mr. Chairman.

Mr. OBERSTAR. Thank you, Mr. Shewfelt.

We want to thank all the witnesses for your statements, each reflecting your own particular role and aspect of this process.

Mr. Shewfelt, I don't think that anywhere in the Federal Government we have a more dedicated group of workers than in the Federal Aviation Administration, particularly in the air traffic control system. They are dedicated people. We have seen that all throughout the country. We appreciate your remarks. They do work very hard. We recognize that.

Mr. Erickson, let me take you back to a day last summer, last July, when the subcommittee held its executive session at the air traffic control center. I want you to think for a moment and review your action on the day following the service of the subpoena. Did you see Mr. Miller on that day?

Mr. **Erickson**. On that particular day, I don't recall, sir.

Mr. **Oberstar**. Well, let me——

Mr. **Erickson**. Okay, Yes. Yes, sir, I do.

Mr. **Oberstar** [continuing]. Review for you.

Mr. **Erickson**. Yes, sir, I did.

Mr. **Oberstar**. You did see him. Was it a formal meeting?

Mr. **Erickson**. To the best of my recollection, it was not a formal meeting, sir.

Mr. **Oberstar**. What did you discuss?

Mr. **Erickson**. As I recall, I met Mr. Miller in the hallway at the conclusion of the hearing, and I advised Mr. Miller that the subcommittee was here, that the purpose of the meeting was to subpoena the records, that the records were taken from the facility.

Mr. **Oberstar**. Mr. Erickson, confining the question to the day on which the subpoena was served. You were talking just now about the day on which the hearing occurred. The subpoena was served the day prior to the hearing.

Mr. **Erickson**. Yes. I don't recall whether—you know, whether I talked to Bob that day or not.

Mr. **Oberstar**. Mr. Miller, do you recall whether you had a discussion with Mr. Erickson on the day on which the subpoena was served?

Mr. **Miller**. I don't know what day the subpoena was served, Mr. Chairman. I was on one of my days off. Mr. Erickson did tell me in the hall that the subcommittee was in the building. I don't recall any other specifics of the conversation.

Mr. **Oberstar**. Well, we want to review that period of time just briefly here.

Mr. Moody, a Member of Congress, asked Mr. Erickson a series of questions about the security provided for the documents that were available for the committee.

Now let me ask you the question again, Mr. Erickson. Did you meet with Mr. Miller on the day of the subpoena, following service of the subpoena? Did you talk with him in the hallway, in your office? Where, and about what?

Mr. **Erickson**. As I recall, Mr. Chairman, the—I did discuss the day after the subpoena was served, the day that the committee was there. I did discuss with Mr. Miller. He came in the facility, I believe, after the committee had left. I did discuss with Mr. Miller in the hallway the purpose of your visit, the fact that you had subpoenaed the records and taken the records, and that his name had come up in the course of the investigation or in the course of the questions.

Mr. **Oberstar**. Again, did you meet with Mr. Miller after service of the subpoena?

Mr. **Erickson**. That I don't recall, sir. I do know that I did have a conversation with Mr. Miller after the subcommittee left.

Mr. **Oberstar**. Well, there is an apparent inconsistency in your statement now and your statement at the time of the hearing and your statement to subcommittee investigators earlier this year. We want to clarify that. It is important for the purpose of the hearing.

Mr. Moody said to you, Mr. Erickson, concerning the guard in earlier questioning asking whether Mr. Miller had been in the room where the documents were held, and asked whether you had discussed that with Mr. Miller. You said, "No."

"How do you know that he wasn't in the room?"

Mr. Erickson said, "Well, we put a guard on that door yesterday after 4:00 in the afternoon, which was about three hours after, about three hours after we were served with the subpoena. Mr. Miller was in a meeting with me yesterday from the time from about ten minutes after the time that we got the subpoena until about 4:00, or about 3:30 in the afternoon. By that time, the guard was up here. And I asked the guard this morning if anybody had been in that room, and he indicated no."

Mr. **Erickson**. Okay. I am hearing that recantation. I can—it refreshes my memory. That day, we had a meeting with the area managers. I believe it was scheduled for 1:00 in the afternoon the day that the subpoena was served. Mr. Miller was an area manager. We—the meeting that we had was with all of the area managers, not specifically to have any specific discussion with Mr. Miller about the serving of the subpoena.

I do not recall whether I mentioned anything specifically to Mr. Miller about the purpose of the subcommittee being there, sir. That, the meeting was not a specific meeting to discuss the subpoena.

Mr. **Oberstar**. Mr. Miller, now with that background, can you tell us about what was discussed at your meeting with Mr. Erickson?

Mr. **Miller**. When we met in the hall, I believe it was the day after the area managers meeting, and he said the subcommittee was in the building. And I believe it was a very, very brief meeting. He didn't describe anything that I can recall about specifics on it.

Mr. **Oberstar**. I am talking about the day on which the subpoena was served. That would have been a very significant day, a very significant event, not one likely to be forgotten. You don't recall Mr. Erickson's discussion with you following service of the subpoena?

Mr. **Miller**. No, sir. We had an area managers meeting the day I believe he is describing, and to the best of my recollection, he didn't mention the subpoena to me or to the group of area managers that was meeting.

Mr. **Erickson**. Mr. Oberstar, could I further clarify that?

Mr. **Oberstar**. Yes.

Mr. **Erickson**. The day the subpoena was served, of course, I was acting manager of the facility. I had—I was served the subpoena by

Mr. Goebel at about 11:30 or 12. We had a 1:00 area managers meeting scheduled. It was going to be a very volatile area managers meeting because we were going to make some personnel changes which I, you know, was going to have to announce at that point.

The area managers meeting, as I recall, the serving of the subpoena or the purpose of the serving of the subpoena might have been mentioned in the fact that a subpoena has been served, but there was no discussion about it because at that point, you know, I was not really fully aware of what—you know, what the significance of that was.

Mr. OBERSTAR. Mr. Erickson, who was responsible for arranging a security guard to keep watch outside the room containing the subpoenaed documents?

Mr. ERICKSON. As I recall, that was done at the regional office, sir.

Mr. OBERSTAR. That was done at the Regional office?

Mr. ERICKSON. The coordination for that was done at the Regional office.

Mr. OBERSTAR. You did not arrange—following service of the subpoena—you did not arrange for the security guard to keep watch over the——

Mr. ERICKSON. I personally did not, no, sir.

Mr. OBERSTAR. Who did that?

Mr. ERICKSON. It was one of the—I really don't know. We had been in conversation with the Regional counsel, and I believe that they took care of the coordination. I received a phone call indicating that I was to talk to the guard out at the guard shack to arrange to have somebody there at 4:00 and have them there during the complete time that the—you know, until the subcommittee came back the next day.

Mr. OBERSTAR. All right. When did the security guard begin his duty watch?

Mr. ERICKSON. I can't be totally certain, but it was about—it was around 4:00, 3:30, 4:00, somewhere in there.

Mr. OBERSTAR. And who gave instructions to that security guard when he came on duty?

Mr. ERICKSON. I did, sir.

Mr. OBERSTAR. You did.

Mr. Miller, did you have any contact with or give any instructions to the security guard?

Mr. MILLER. No, sir.

Mr. OBERSTAR. Well, let us go to the statement of Mr. Elko. I asked Mr. Elko, the security guard, "Do you know Mr. Robert Miller?"

"Yes, sir, I do."

"Did you see him in the building during last night or this morning?"

Mr. Elko: "No, I didn't, but I saw him. He's the one I reported to, Mr. Miller and Mr. Erickson, when I come on duty yesterday."

Then he went on to say—Mr. Moody asked the question, "You did not see Mr. Miller here last evening at any time?"

Mr. Elko: "No, sir, at 4:00 I saw him, and that's the only time, when I reported to him."

Mr. MILLER. Mr. Chairman, I don't believe he reported to me. We had an area managers meeting, and the office that we meet in—we have our monthly meeting—is right adjacent to the chief's office. It's a conference room right adjacent to the chief's office. And I may have greeted him in the hall. I have known Mr. Elko for a long period of time. But I gave him no instructions, and he did not report to me per se as to a duty assignment. I may have said hello to him in the hallway right beside the chief's office in front of the conference room door.

Mr. OBERSTAR. Did you enter the documents room at any time during that afternoon—that is, the afternoon of the day on which the subpoena was served—that afternoon, evening, or the following morning?

Mr. MILLER. No, sir, Mr. Chairman, I believe that I was not in the room within a month of these occurrences either side.

Mr. OBERSTAR. Mr. Gunter, it is our understanding that controllers who failed to report to work received a letter proposing their removal. How did you know that a controller was not at work?

Mr. GUNTER. Mr. Dick Pender, in charge of the personnel department, was in charge of putting together the proposed removal letters. Dick would bring those to me after he had gone over the data from the control room, the sign-in logs, and he would prepare those removal letters as to whether a guy was there or not there, and of course, these were the people that were not there. He would bring those to me, and I would sign those, and then he would handle the mailing of them. I personally did not look at that time at any of the logs. Mr. Pender was handling that.

Mr. OBERSTAR. How can you explain the fact that people shown on the log as being on annual leave were sent proposed removal letters?

Mr. GUNTER. Prior to the strike, and prior to the first indication of the first walkout in June, the area managers were instructed to communicate to the area supervisors, and they to their employees, that if a strike occurred, that their annual leave was cancelled and if they were on annual leave, it was cancelled. That walkout did not take place.

So then we were following up to August 3. We again reiterated to communicate that and document it to the employees. This time it was added that if you were on annual leave, you were to call the facility, that your leave is cancelled and you were to call the facility to find out if it was going to be extended or the continual approval is there.

So from that viewpoint, in my opinion, and the facts that I had at the time, was that the leave had been cancelled, that everybody had received that word.

Mr. OBERSTAR. Well, how is it that some controllers received removal letters when their names were not on any log?

Mr. GUNTER. I really cannot--I can't answer that because I was not looking at the logs at that time.

Mr. OBERSTAR. Well, is it possible that some other sort of document was used to issue those removal letters? For example, would there have been a list of people working and then a letter sent out to all those who were not on that list of people working?

Mr. **Gunter**. I would assume that that could have happened. There were seven areas, and I am quite sure that it was happening different in each area. The recording of who was there, who was not there. I left that up to Mr. Pender, and I was not involved in the details of putting those proposed removal letters together.

Mr. **Oberstar**. Did you have any role in compiling a list of controllers who received proposed removal letters?

Mr. **Gunter**. To the best of my recollection, just signing the document to be mailed.

Mr. **Oberstar**. All right. I want you to look at a list of names that came from the materials subpoenaed by the committee. [Exhibit 1] [1]

[Pause.]

Mr. **Oberstar**. Take a moment to familiarize yourself with the list with the names.

Do you recognize this list?

Mr. **Gunter**. This looks like a summary of each of the seven areas.

Mr. **Oberstar**. Who might have prepared this list and what might it have been used for?

Mr. **Gunter**. To the best of my recollection, I would—I would think that this is a summary of the seven areas to summarize in reviewing who had been contacted and who had not been contacted, after a follow-up or review with the supervisors in the area.

Mr. **Oberstar**. Could this list also have been used to determine which controllers were absent and therefore to be sent proposed removal letters?

Mr. **Gunter**. No, sir. To the best of my recollection, this would not have been used, and this—it, after looking at it, would not have come until later on, maybe a week or two or three after we had a chance to review.

Oh, okay, I see that it's dated August 6.

Mr. **Oberstar**. It's dated August 6?

Mr. **Gunter**. Yes. No, sir, to the best of my knowledge, what was used to issue a proposed removal was the absence of an employee's name on the sign-in log.

Mr. **Oberstar**. Well, some of the controllers received proposed removal letters because they missed a shift on either Monday the 3rd or Tuesday the 4th. Now, the President issued an order permitting the controllers to have until 10 a.m., Wednesday, or their first scheduled duty thereafter, to return without prejudice before being fired.

Now, it appears that the removal letters, some of those removal letters, were contrary to and issued prior to—or, if they were issued afterward, were contrary to—that order of the President.

Mr. **Gunter**. Yes, sir, I would agree with that.

Mr. **Oberstar**. Once a controller was sent a proposed removal letter, was he allowed to return to the center to explain reasons for his absence, including annual leave?

Mr. **Gunter**. To the best of my recollection, there was a period of time there that a person could return—and some did return—and come to the office and discuss their particular situation. Then there was a——

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[1] Exhibits 1 through 18 referred to throughout the record appear in the record beginning on page 291.

Mr. **Oberstar**. What time was that?

Mr. **Gunter**. To the best of my knowledge, the first couple of days. And also——

Mr. **Oberstar**. But they might not have received their removal letter in the mail if it were sent out by then?

Mr. **Gunter**. That's true.

Mr. **Oberstar**. Or if they were on leave.

Mr. **Gunter**. I don't recall the specific time. I am just estimating the first part of the week. In the best of my recollection, we brought some people back, or permitted them to come back. And then there was another period of time that it was the latter part of the week, to the best of my knowledge, that after they missed their deadline shift, after the President's statement, then they were not allowed back until they had gone through the oral-reply hearing.

Mr. **Oberstar**. Now, the President said 10:00, Wednesday morning. We had testimony—and we have other information corroborates that testimony—that the gate was locked and the chain at 9:30 that morning. Why would that have been done?

Mr. **Gunter**. Mr. Chairman, I was downtown Chicago in court at that time. However, I was on the phone with the deputy at the time. I could—I could give you my version of testimony that I have heard or was briefed on, but Mr. Miller has more direct knowledge on that.

Mr. **Oberstar**. Mr. Miller, can you tell us why the gate was—whether in fact, in your recollection, the gate was locked and chained at 9:30.

Mr. **Miller**. Mr. Chairman, I don't believe the gate was ever locked per se. There was a large congregation of picketers and strikers at the front gate, and the demonstration was taking place at that time, and Mr. French had gone out and requested the gate be closed. And when he came back in, he said he had closed the vehicular gate.

The personnel gate was never closed. The gate right next to the automotive entrance gate was always left open, but the large gate he had closed. And I went out to check with the guard and asked the guard to open the gates back up because vehicles had driven by and they could not get through the crowd, so I asked him to open the gate back up and if we did have trespassers, that we would deal with that issue when it occurred. And he did reopen the gate. It was closed and a chain hooked across it, but never locked for, I believe, about 15 minutes.

Mr. **Oberstar**. At about what time was that?

Mr. **Miller**. I believe it was about 9:30 or 9:45 in the morning.

Mr. **Oberstar**. Thank you, Mr. Miller.

My time has expired.

Mr. Clinger?

Mr. **Clinger**. Thank you, Mr. Chairman.

I would like to ask unanimous consent that when documents or exhibits are referred to in the course of these proceedings, that they would be admitted into the record.

Mr. OBERSTAR. Without objection, all exhibits entered into the record will be placed at the conclusion of the hearing record. [See p. 291.]

Mr. CLINGER. At this point, Mr. Chairman, I would like to yield to Mr. Molinari for the next series of questions.

Mr. OBERSTAR. The gentleman from New York is recognized.

Mr. MOLINARI. I thank the gentleman for yielding.

Mr. Gunter, in your testimony with regard to oral replies, you say it is your recollection that the hiring of oral-reply officials was arranged through the Regional office. But can you describe for us the process by which those oral-reply officials were hired?

Mr. GUNTER. No, sir, I cannot. Mr. Shewfelt may be able to answer that.

Mr. MOLINARI. I understand. I will ask him in a second. Do you know who hired them?

Mr. GUNTER. No, sir, I do not know who was handling that project.

Mr. MOLINARI. You had nothing to do with the hiring of it yourself; that occurred from the Regional office officials?

Mr. GUNTER. That's true.

Mr. MOLINARI. Mr. Shewfelt, could you expand upon that for us?

Mr. SHEWFELT. When the strike began, we knew that there would not be a sufficient number of people of a stature to hear oral replies from the people who were responding to the proposal to remove.

So we contacted through our personnel office, contacted a number of former FAA officials, people who had been supervisors and who had retired or others who had left the agency for other reasons, and they were reemployed temporarily and assigned to those duties.

Mr. MOLINARI. Mr. Gunter, you testified before the Merit Systems Protection Board under oath on the first of November 1982, in Chicago, Illinois. On the issue of the appointment of oral-response officials, the question was asked to you, "Did you in fact delegate someone to do so?"

Your answer: "Yes, I did."

"Okay. And was it more than one individual?"

Answer: "Yes, I—approximately eight or nine."

"Did you hear any oral replies yourself?"

"No."

Now, Mr. Gunter, your testimony, your sworn testimony on the 1st of November 1982 was that you delegated the authority and you named eight or nine individuals to do that job. Now today your testimony is that you have no recollection of doing that and, in fact, it's your recollection that it was arranged through the Regional office. Which version is correct, sir?

Mr. GUNTER. The hiring in the process was done by the Regional office. I was contacted, consulted with as to who they had hired, and I had no problem with those individuals. As far as the delegating there, once they came to the facility, they were then under my jurisdiction, my general supervision.

Mr. MOLINARI. That's not the question, sir. The question is: Who hired them; who designated them? Here you are indicating that, yes, you did, in 1982; and today you are saying that it wasn't you, the names you knew and you had no problem with them. That's not the issue. The issue is who appointed them. On the sworn testimony in 1982 you said you did. Today you are saying you had nothing to do with it, it was done out of the Regional office.

Mr. GUNTER. Well, I see a difference, Congressman, between hiring someone and delegating responsibility to them. I——

Mr. MOLINARI. Well, now maybe you see a difference.

Let me read to you the presiding officer's response in his decision: "Chief Gunter testified that he appointed eight or nine individuals. He provided the names of eight officials to hear the oral replies at the Chicago Center. He stated that he made an assumption, based upon his direct and indirect knowledge of the oral-reply officials, that they were qualified for this job since they had at some point in their careers been involved in the proposing of disciplinary actions, the hearing of oral replies, and/or taking final disciplinary actions."

Clearly, clearly, Mr. Manrose got the impression from your sworn testimony that you were saying that you designated the eight or nine hearing officials.

Now, you can call it "delegate," you can call it "appoint," call it any term you want. Your testimony, sir, in 1982 is that you were the one responsible for designating those hearing officials. That is not what you are saying today.

Mr. GUNTER. Well, sir, I still see a difference between the hiring and then the—being the supervisor of those people rehired to perform a function and then delegating to them that function to be done and to where it is to be done.

Mr. MOLINARI. I am not asking you about delegating functions. I am asking you who hired them. I am going to ask you once again, did you hire the hearing officials, the oral-hearing officials?

Mr. GUNTER. The Regional office did the hiring and consulting with me as to who they had hired. They did the hiring.

Mr. MOLINARI. Now we hear it is in consultation with you.

Mr. GUNTER. Yes, I said that a few minutes ago, sir.

Mr. MOLINARI. Then the testimony you gave before the Merit Systems Protection Board was inaccurate?

Mr. GUNTER. No, sir, I would say it's not, to my understanding at the time.

Mr. MOLINARI. Let me go back just a little before that question. Maybe we can clear up your memory.

"Now, following your sending out the notice of proposed removal to an individual, was each individual then given an opportunity to respond to that notice, to the charges?"

Answer: "Yes."

"Okay. And in fact, were they given an opportunity to respond to you in writing?"

"In writing, orally, or both."

"Okay. And if a person requested an oral response, an opportunity to respond orally, did you yourself act as the oral-response official?"

"No."

"Did you, in fact, delegate someone to do so?"

"Yes, I did."

Now, that is clear and specific on its face. You didn't say, "On advice or recommendation from Regional office." No, the answer is, "Yes, I did."

Mr. GUNTER. Yes, sir, I did delegate that responsibility, which if it had not been so many, if it had been one case, one individual case, then I would have been the hearing official. But since it was so many, I could not handle that work load and continue to perform looking after the Chicago Center. And from that viewpoint, I delegated that function.

Mr. MOLINARI. So you named the other individuals to help you do this process?

Mr. GUNTER. After they were rehired by the FAA to be available to perform that job.

Mr. MOLINARI. Why did FAA rehire them? On whose authority? At whose suggestion?

Mr. GUNTER. I would refer that question to Mr. Shewfelt.

Mr. MOLINARI. Well, I am asking you, sir.

Mr. GUNTER. I don't——

Mr. MOLINARI. Did you have anything to do with recommending these people?

Mr. GUNTER. No, sir.

[Pause.]

Mr. MOLINARI. Mr. Shewfelt, was it yourself that designated these officials?

Mr. SHEWFELT. No, sir, they were delegated or designated to hear the reply by Mr. Gunter. They were hired by the Regional office and our personnel office. That is the standard procedure when people are hired. Managers don't hire people directly; they are hired in the personnel office, and these, these officials were hired in the same manner.

Mr. MOLINARI. Well, who picked them is what I am trying to get at.

Mr. OBERSTAR. Who recommended them? Who provided the list of names?

Mr. SHEWFELT. Well, they were all officials who had recently retired and that we had knowledge were still available in the area, and they were contacted personally and asked if they would be interested in doing this kind of work.

Mr. OBERSTAR. By whom?

Mr. SHEWFELT. By personnel specialists.

Mr. OBERSTAR. In the Regional office?

Mr. SHEWFELT. That's correct.

Mr. MOLINARI. Mr. Gunter, had you known any of the designated officials prior to the time of their appointments?

Mr. GUNTER. I—I had known some of them by name. I knew one personally, and that was Joe Bosslett.

Mr. MOLINARI. Did you meet with any of those officials prior to the beginning of the oral replies?

Mr. GUNTER. Yes, I did.

Mr. MOLINARI. Can you tell us about when?

Mr. GUNTER. Approximate date. I know that I met with them prior to them starting to hear the oral replies. The exact date, approximately somewhere around August 12 or 13, somewhere in there.

Mr. **Molinari**. What was discussed at those meetings?

Mr. **Gunter**. Just general discussion. As I said in my opening statement, they were there to hear the oral replies, to be very attentive, listen, document it, summarize it, and make a recommendation to me.

Mr. **Molinari**. Did you set forth any guidelines by which you expected a recommendation that controllers be dismissed?

Mr. **Gunter**. No, sir.

Mr. **Molinari**. I would like to show you a document entitled "Telegraphic Message, GENOT RWA 1147 SVCB." [Exhibit 2]

And would you please give a copy to Mr. Shewfelt at the same time, one of you attorneys?

[Pause.]

Mr. **Molinari**. Please review that.

[Pause.]

Mr. **Molinari**. Now, would you please—I am sorry, I will wait until you've completed.

[Pause.]

Mr. **Molinari**. Do you recognize the document, sir, Mr. Gunter?

Mr. **Gunter**. Somewhat, yes.

Mr. **Molinari**. Mr. Shewfelt, do you recognize it?

Mr. **Shewfelt**. Yes, sir. Not in this particular form. It comes to us in a telegraphic format, but this is—I am familiar with this document.

Mr. **Molinari**. All right. Mr. Gunter, would you read that portion that is highlighted at the bottom of the page?

Mr. **Gunter**. "As described in paragraph 206(b) Order 3770.2(b), the representative must prepare a written summary of the oral response and recommend what the decision on the proposed action should be."

Mr. **Molinari**. What does that mean in your own mind?

Mr. **Gunter**. That means that the individual hearing the oral reply would put it in writing in a summary form and then make a recommendation to me as to what action I should take.

Mr. **Molinari**. What would those recommendations be, for example? Did you have recommendations to dismiss? Did you have recommendations to reinstate?

Mr. **Gunter**. Basically, the recommendation could be whether to rehire the guy or to dismiss him.

Mr. **Molinari**. The documents that the oral-hearing officers at Chicago Center were given had on the bottom "Recommendation. Further facility discussion," and then there were two lines, "Yes. No." And you put an X or they put an X where they felt the X should go. That's the only recommendation called for by this document. It's my understanding that that was not the procedure employed in all the other facilities.

I will get to Mr. Shewfelt in a moment.

Was that form set up by yourself? Is this what you expected from your oral-hearing officers?

Mr. **Gunter**. I did not develop the form per se myself. But I expected a reply from them that they either recommend that we not take the employee back or they recommend that we should look further into the case.

I was viewing that from a point of view that there would have to be some kind of follow-up on some of the particular cases.

Mr. MOLINARI. Every document that we have examined that was an oral-hearing officer's response statement never indicated that the controller should be fired or that the controller should be reinstated. The ones we examined, and there were many, simply had that statement on the bottom whether there should or should not be further facility discussion.

Now, that is not what you read before, and the Order 3770.28, which is a reference to Federal law, said that the written summary must recommend what the decision of the proposed action should be. That's not what you were doing at the Chicago Center. Why?

Mr. GUNTER. Would you repeat that question, please, sir?

Mr. MOLINARI. Sure. You read the statement before that I asked you to read?

Mr. GUNTER. Yes.

Mr. MOLINARI. It's very simple. It's instructions that were received throughout the country and stated that the representative, whoever delegated, appointed, or whatever, must prepare a written summary of the oral response and what the decision on a proposed action should be.

Looking through all the statements that were provided by the eight or nine representatives, we see no such recommendations. They were not following the instructions that you received—from Washington, I might add.

Mr. GUNTER. In my viewpoint, they were not only restricted to the yes or no there to check, they could have written any other type of comment that they desired to do. When it was checked that other further facility discussion should take place, that was an indication to me that if what the employee had been saying to the oral official or hearing official is true, then he should be returned to work.

Mr. MOLINARI. Let me read to you from earlier testimony where you were cross examined by Mr. Klein, the attorney?

Mr. GUNTER. Somewhat.

Mr. MOLINARI. Well, maybe you will remember the testimony. "Okay," Mr. Klein says, "okay, let me make sure the record is clear. My question to you now is: the hearing officer had no input into your thought processes other than to suggest you review a file again? Is that true, Mr. Gunter?"

Mr. Gunter: "That's true. He would recommend on the form either yes or no for me to look at it further."

"Okay. My question to you—I want to make sure you answer the question specifically—the only input that the hearing officer had in your thought processes decision was to suggest that you review a file again; is that correct?"

Mr. Gunter: "True."

Mr. Klein: "I am now reading from page 114 in the same deposition. The question was asked to you, sir, the last question on the bottom of 114, 'When a hearing officer checked the box that said yes, further facility discussion necessary, how did you treat that file compared to a file where the no box was checked?"

Your answer was, "I treated it the same, about the same."

Next question: "No different procedure in either?"

"No."

Then he said, "Is that your testimony also here today?"

Mr. Gunter: "In my mind, in answering that—," and Mr. Klein interrupted and said, "Sir, is that your testimony here today?"

Mr. Gunter: "Yes."

So it really didn't matter to you what the recommendation was that was provided on the bottom of that form; you were going to make your own decision anyhow. That's what you said in sworn testimony.

Now, do you stand by that testimony today?

Mr. GUNTER. I stand by that testimony from the viewpoint that I read each file and I studied it very carefully to the best of my ability whether it was checked no or yes. I checked into all of them, and I just didn't take it because it said no and just put it to the side. I studied that file. That was my intention, and that's what I meant by that.

Mr. MOLINARI. All right. So you made your decision based on a reading of the file and examination of the logs and the other documents we've heard of, and that formulated the basis for your determination?

Mr. GUNTER. The bottom line is the lack of signature of the person being there at work, yes, sir.

Mr. MOLINARI. So all this process of providing for oral hearings and taking the oral statements really didn't mean a damn to you, did it? The fact is what you have just said, and you've said it many times before, you were going to make your own decision based on what the file disclosed, not what this hearing that was designed by Congress that was enacted into law and was also sent to you and directed that you follow that procedure. The bottom line was you were going to make your own decision. Why have a hearing officer go through all that problem?

Now, I find that very disturbing. I find that very disturbing. What would happen if a hearing officer said, "I suggest and recommend that this man be reinstated." Mr. Gunter is telling us today, "It wouldn't have mattered. I am going to look at the file, study the file carefully as I do in all cases, and that's upon which I base my decision."

Mr. GUNTER. Sir, with due all respect, I do not share your opinion that my mind was operating in that area.

Mr. MOLINARI. I am merely repeating what you said. I am not describing any other motive. I am just repeating to you, sir, what you have said in testimony before and statements before, and what you are saying here today. Do you want to change your testimony at any point? Maybe you should.

Mr. GUNTER. No, sir.

Mr. MOLINARI. All right. Let me get on to the next question.

Counselor, does he wish to make a further statement?

[No response.]

Mr. GUNTER. It was very important, and I considered it very important, that an individual had the process of an oral reply official and to tell his side of the story. That was important to me. That was the process. But I had the final decision to make, and I was under no obligation to follow their particular recommendation. But it did mean something to me.

Mr. **Molinari**. Let me read to you the next paragraph: "Officials not employed by FAA should not be used for this purpose."

Now, I guess I have to shift over to Mr. Shewfelt.

Mr. Shewfelt, how was it that since this instruction on not employing those who were not in the FAA system was not followed in this case?

Mr. **Shewfelt**. It was followed, sir. They were employed.

Mr. **Molinari**. They were employed?

Mr. **Shewfelt**. Yes. After I heard yesterday that this was going to be an issue, I talked with Mr. Curran, and that's exactly what he contemplated, and it was done similarly in other locations.

Mr. **Molinari**. You're saying that they had been employed; they weren't brought in and re-employed for the purpose?

Mr. **Shewfelt**. No, I am saying they were brought in and reemployed.

Mr. **Molinari**. Oh. Oh, okay. Okay. So the fact is, then, that when the instructions came from Washington saying officials not employed by FAA should not be used for this purpose, you could have gone out of the system, outside of the system, and hired anybody first and then they're in the system and you're complying with the intent of that provision? Is that what you're saying?

Mr. **Shewfelt**. No, sir. We were hiring people who had—who met the other criteria that was necessary to perform that function such as they had been supervisors in the FAA and understood the procedures that were involved and were familiar with the air traffic control system.

Mr. **Molinari**. Mr. Shewfelt, did you have communications with Mr. Gunter with respect to the oral reply statements that were being furnished from him to you?

Mr. **Shewfelt**. No, sir, not—not personal.

Mr. **Molinari**. You were responsible for how many records facilities?

Mr. **Shewfelt**. Well, I was the labor relations manager for the Region, and the Region had 75 air traffic facilities. I was not his supervisor or any air traffic supervisor.

Mr. **Molinari**. Were you familiar with the forms, these oral hearing forms that were used in other areas, in other facilities?

Mr. **Shewfelt**. I saw them at a later date. I was not involved in the development of them in any of those facilities.

Mr. **Molinari**. I understand. I am just asking if you saw any of the forms.

Mr. **Shewfelt**. I saw the forms that were used at Chicago Center. I can't recall any of the other ones. There may have been not forms, there may have only been letters.

Mr. **Molinari**. Did you ever have a conversation with Mr. Gunter about the forms themselves and the fact that they didn't seem to comply with the provisions of the GENOT or the Federal law?

Mr. **Shewfelt**. No, sir. I think that they do comply.

Mr. **Molinari**. You think that they do comply.

Mr. **Oberstar**. The time of the gentleman is expired.

Mr. **Molinari**. I just have one more.

Mr. **Oberstar**. We have to get on to other members.

Mr. MOLINARI. The Code of Federal Regulations section 2—this was referred to yesterday, so I assume you know about it—"The agency shall designate an official to hear the employee's oral answer who has authority either to make or recommend a final decision on the proposed course of action or the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses," et cetera. [Exhibit 3]

What the code says is the employee has the authority—it says "designate somebody that has the authority either to make or recommend a final decision." Now, where in that form, that recommendation on the bottom, do you feel, Mr. Shewfelt, that complies with the provisions of the law?

Mr. SHEWFELT. Well, as Mr. Gunter said, they could have written in there that the person should be retained and not removed.

Mr. MOLINARI. They could have. They could have done a lot of things. They could have added a document to it, a line, a page, and put some notes on it. That's not what the form calls for. Don't you believe that the form should conform to the law so that somebody who is put on for a limited period of time conducting these hearings, on the bottom recommendation, not limiting yourself to further facility questions? Do you really believe that that responded to the dictates of the law?

Mr. SHEWFELT. Yes, sir.

Mr. MOLINARI. Mr. Chairman, I have no further questions at this time.

Mr. OBERSTAR. The Chair recognizes the gentleman from California Mr. Mineta.

Mr. MINETA. Thank you, Mr. Chairman.

Mr. Gunter, I would like to follow up on Mr. Molinari's questioning of you. You said something about regardless of what the oral hearing officers' recommendations might be, that it was important to you that you go through those files.

Mr. GUNTER. Yes, sir.

Mr. MINETA. It was important to you for what reason?

Mr. GUNTER. Because I was concerned, and personally concerned, that I would make the right decision on each case, and I wanted to also, to the best of my ability, to make sure that I didn't overlook something. When the person checked that "further discussion," that keyed me that they had heard or had heard something from this employee that should be looked into. And many, many times, in fact—I can't sit here and say exactly how many—but we would follow up and seek further information as to what the employee had said that was going on in his life. We would try to verify that.

Mr. MINETA. How would you verify that?

Mr. GUNTER. One of the employees that were working in the war room, I would ask, give the file back to them to follow up, make phone calls, contact the employee's immediate supervisor, verify phone calls, whatever the employee had said as to his reasons——

Mr. MINETA. Were the employees ever contacted directly?

Mr. GUNTER. I'm sorry, sir?

Mr. MINETA. Were the employees themselves contacted directly?

Mr. GUNTER. To the best of my recollection, I don't believe so.

Mr. **Mineta**. So you were always taking the word of someone else other than the person whose job was at stake. But you never contacted the individual, the employee, themselves?

Mr. **Gunter**. To the best of my recollection, I do not believe they were contacted.

Mr. **Mineta**. I guess that's why I am asking, when you say, "It was important to me," was it important to you from your perspective of documenting the firing of these individuals, or was it from the perspective of protecting the rights of those employees?

Mr. **Gunter**. I would say that it was in the viewpoint of making sure that I did the correct thing. I also, sir, would like to remind the panel here that I did return some people after studying the files and verifying the documentation there. Some people did return to work, and I withdrew the proposed removal.

Mr. **Molinari**. Would the gentleman yield for one quick question?

Mr. **Mineta**. Absolutely.

Mr. **Molinari**. Could you give us the names of any of those individuals that you returned?

Mr. **Gunter**. No, sir, I can't recollect the names.

Mr. **Mineta**. Could you supply that?

Mr. **Gunter**. Yes, we could.

[The information requested was not received by the Subcommittee at time of publishing.]

Mr. **Mineta**. I am not a Member of the Subcommittee but my colleagues have taken this issue and the process and picked it apart. Maybe you could help me. I recognize that in the atmosphere, or the environment of what was going on August 5, 6, 7 that there was a great deal of pressure, and you were short on personnel.

But just from what I have heard and read, it just seems to me that a lot of corners were being cut, that processes, established processes, were not being followed. There is a sense of what I said yesterday, that "The fix was in. Fire these people, get rid of them." The fix was in, and you were marching to that drummer. And I take your statement that it was more important to you, literally, more from your perspective as manager of the facility at that time, to document a case and to fire these people, rather than trying to actually document them in terms of protecting the rights of these individuals who were under your employ.

It just seems to me that there were a lot of corners being cut in terms of an atmosphere that just said, "Make sure the documentation is complete in justifying their firing, including some of these changes and alterations that were made." I know that we will get into those in a little more detail a little later on, but it just seems to me that the emphasis that you place in you review was misplaced in terms of perspective.

Mr. Chairman, I don't have any more specific questions. I will follow the subcommittee's work here. As the Chair of the Aviation Subcommittee, I just want to say thanks to you and the Members here for the work that you are continuing to do, and I will follow this very, very closely.

Mr. **Oberstar**. We are very appreciative to have your participation in the hearings and know that you will follow, as you always have as former chairman of this subcommittee. Thank you.

The Chair recognizes the gentleman from Pennsylvania, Mr. Clinger.

Mr. **Clinger**. Thank you, Mr. Chairman.

Just following up, Mr. Gunter, on Mr. Molinari's line of questioning here.

Referring to the oral reply summary statement, which I think you have a copy of, the hearing official in that case, John Wubbolding, wrote a statement on that summary form in which he then said, "Upon inquiry by the union representative, I advised that I have no authority in the final decision. My responsibility was to prepare a summary with a recommendation and submit it to the deciding official."

It seems to me it's difficult to reconcile that admission by one of the hearing officers who had been appointed, with the guidance which came from FAA headquarters here in Washington that they should have the power, the authority to make a final recommendation as to the disposition of the individual case. At the very least, here was a hearing official who at least misunderstood what the extent of his authority was.

Mr. **Gunter**. Well, sir, the statement—I had the final authority as far as the decision to retain or to remove, and I believe that's what this hearing official was trying to communicate at the time. He did have the authority to make a recommendation, but the final decision had to be mine.

Mr. **Clinger**. But the form itself really pretty much dictated what his recommendation would be. His recommendation would be "Further facility discussion." That was preprinted on the form. That was kind of—in every case—that was the only recommendation that was made. Is that correct?

Mr. **Gunter**. True.

Mr. **Clinger**. Mr. Shewfelt, you did have responsibility for many FAA facilities during this period other than the Chicago Center; is that right?

Mr. **Shewfelt**. Yes, sir.

Mr. **Clinger**. And as a result, passing through your hands or through your office would have been the oral reply hearing records from all of these facilities?

Mr. **Shewfelt**. Yes, sir.

Mr. **Clinger**. Do you recall seeing oral reply summaries from other FAA facilities comparable to or identical to the type of form that was used at the Chicago Center?

Mr. **Shewfelt**. No, sir, I can't remember a form specifically like this.

Mr. **Clinger**. In other words, you don't recall that any other office limited the authority of the hearing officer to providing additional facility consultation?

Mr. **Shewfelt**. No, sir, I didn't see any forms like this other than from Chicago Center.

Mr. **Clinger**. Mr. Gunter, during the time immediately following the strike, we understand that the Chicago Center management instituted a new central office for the purpose of preparing and reviewing the documents, including the sign-in logs and the T&A records used as physical evidence to justify the firing of the controllers. Would you just confirm, is that correct?

Mr. **GUNTER**. Yes, sir, we did have a separate room.

Mr. **CLINGER**. And it became designated as the war room, but it had at least informally been known as the PATCO headquarters of the Chicago Center prior to the time of the strike?

Mr. **GUNTER**. Yes, sir.

Mr. **CLINGER**. On whose orders was the war room established?

Mr. **GUNTER**. On my—my orders.

Mr. **CLINGER**. And who of the Chicago Center were assigned to work in that room?

Mr. **GUNTER**. In my—in my statement I noted the people that I mentioned in my opening statement were assigned to work there in and out. To the best of my recollection, there could have been some personnel clerical help that may have been used at different times in and out. I do not recall the names.

Mr. **CLINGER**. But the people who were sort of temporarily permanently assigned to that room during this period of time were the individuals that you have listed in your written statement?

Mr. **GUNTER**. Yes, sir.

Mr. **CLINGER**. There was not a constant change of characters there; generally those individuals?

Mr. **GUNTER**. That's true.

Mr. **CLINGER**. Were those individuals advised or informed in any way not to discuss the activities that they were conducting in that room with other employees at the Center?

Mr. **GUNTER**. Sir, to the best of my recollection, I honestly don't recall putting any kind of restriction on the room. The room was open, it seems like to me, about 16 to 18 hours a day. I probably—and I don't recall when I would have done this—but I probably would have told them that if one person was in there and they were leaving, they should lock the room. Other than that, I just don't recall any restrictions being put on the room.

Mr. **CLINGER**. You didn't sit down with those five individuals and spell out the fact that you did not want any information to be divulged?

Mr. **GUNTER**. No, sir.

Mr. **CLINGER**. Did you yourself work in that room from time to time?

Mr. **GUNTER**. Yes, sir.

Mr. **CLINGER**. What sort of activities were you engaged in when you were in the room?

Mr. **GUNTER**. Reviewing the cases, individual cases.

Mr. **CLINGER**. The individual cases would be brought to you in the room and you would review them right there?

Mr. **GUNTER**. Yes, sir.

Mr. **CLINGER**. And whom did you work most closely with in those functions? All five of the individuals you have named?

Mr. **GUNTER**. Yes, sir. I just don't recall any one individual being there more often than another one when I was doing the reviewing.

Mr. **Clinger**. We would now like to show you a document identified as an oral presentation worksheet, [Exhibit 5] and ask if you can recall having seen it before?

[Pause.]

Mr. **Gunter**. I recall the worksheet, yes, sir. Not for this particular individual.

Mr. **Clinger**. But the form itself you are familiar with?

Mr. **Gunter**. Yes, sir.

Mr. **Clinger**. Can you identify whose handwriting appears on this particular document?

Mr. **Gunter**. The handwriting starting at Number 2 there, would be my handwriting, and further down.

Mr. **Clinger**. What about the printing under Number 1 there?

Mr. **Gunter**. I am not sure whose that is, sir.

Mr. **Clinger**. Mr. Erickson, can you identify that handwriting? Is that yours?

Mr. **Erickson**. Yes, sir, Congressman, that's mine.

Mr. **Clinger**. Can you recall, Mr. Gunter, if the notations in Mr. Erickson's handwriting at the top of the page were already on the worksheet at the time it was presented to you?

Mr. **Gunter**. Yes, sir, I believe it was.

Mr. **Clinger**. It was. Drawing your attention to the left-hand column on this sheet, which is captioned "Statements required," what sort of statements does that refer to?

Mr. **Gunter**. That could be a statement from a supervisor, an area manager, also could include the oral-hearing reply.

Mr. **Clinger**. Was there one individual or one official whose responsibility it was to see to it that those statements were obtained?

Mr. **Gunter**. I don't think it was any one individual in particular. I think Mr. Erickson may have done more of this than the others.

Mr. **Clinger**. Was that always carried out after you had had a chance to review each controller's file, or in some cases were the necessary anticipated documents acquired before you reviewed the file?

Mr. **Gunter**. Yes, sir. Both.

Mr. **Clinger**. Okay. It was both before and after.

Mr. **Gunter**. Yes.

Mr. **Clinger**. In that same column, "Statements required," there is an item Number 5 entitled "Recommendation: Yes." Can you tell us what that entry referred to?

Mr. **Gunter**. It referred what the oral reply official's recommendation was to mean. "Yes," keeping, or look further into it is what that means to me.

Mr. **Clinger**. Okay. "Yes," further facility consultation; is that it?

Mr. **Gunter**. Yes.

Mr. **Clinger**. When all of the items which were contemplated on this worksheet were assembled, compiled, and reviewed, what did you do next?

Mr. **Gunter**. I—I would take and study the oral reply official's summary, his statement. I would look at the posted watch schedule and look at the 304's to verify that his signature was not there, that he was not at work, and from that and any other statements that would be there that were pertinent to the file as far as cancellation of leave, I would study those and then make my final decision.

Mr. **Clinger**. And those listings you have just given, those were the documents upon which you based your decision at that point to send controllers their notices of final removal?

Mr. **Gunter**. Yes, sir.

Mr. **Clinger**. You indicated you worked in the war room from time to time. For how long a period was that?

Mr. **Gunter**. I honestly don't recall. It seemed like two or three months.

Mr. **Clinger**. Two or three months?

Mr. **Gunter**. My best estimate, yes, sir.

Mr. **Clinger**. How long after the final removal letters were sent did you continue to operate out of the war room?

Mr. **Gunter**. When the final one was sent, to the best of my recollection, sir, I don't recall going back there or having to go back.

Mr. **Clinger**. So after those final removal letters were sent out, that was the end of your activity in the war room?

Mr. **Gunter**. Yes, sir, except for a few that were having a second hearing. I may have gone back once or twice to review those cases. I just don't recall.

Mr. **Clinger**. Thank you.

Mr. Chairman, I think my time has expired.

Mr. **Oberstar**. The chair recognizes the gentleman from Georgia Mr. Rowland.

Mr. **Rowland**. No questions, Mr. Chairman.

Mr. **Oberstar**. The gentlewoman from Maryland?

Mrs. **Bentley**. I have no questions, Mr. Chairman.

Mr. **Oberstar**. Let's pursue further, Mr. Gunter, the questioning that Mr. Clinger has already initiated.

Back to the time of the original Merit Systems Protection Board hearings of the appeals of those controllers in the Chicago Center, do you remember testifying at the hearings?

Mr. **Gunter**. Yes, sir.

Mr. **Oberstar**. What was the nature of your testimony?

Mr. **Gunter**. Basically, verifying the documents that were in the file, the posted watch schedule, the 304's for that particular area or individual and in the oral-reply official's statement, those types of documents, verifying those, and then my final decision.

Mr. **Oberstar**. Do you recall being confronted by one of the attorneys for the controllers concerning apparent discrepancies between sign-in logs in his possession and those which the agency introduced into evidence?

Mr. **Gunter**. Yes, sir, I recall that.

Mr. **Oberstar**. What was your testimony as to those inconsistencies?

Mr. **Gunter**. To the best of my recollection, it was that, yes, some mistakes had been made. In copying from the watch schedule to the 304's, a person could have had his name left off or the time of his shift could have been different from what the posted watch schedule was saying, by just misreading the watch schedule.

Mr. **Oberstar**. As we reviewed the proceedings before the MSPB, it appeared that you had some difficulty explaining those inconsistencies, and the FAA at that time attempted to bring Mr. Robert Miller to the witness stand to testify. Why did the agency want to put Mr. Miller on?

Mr. **Gunter**. I—I can't answer for them, sir. I don't recall——

Mr. **Oberstar**. Would he have had sufficient knowledge about the process to testify?

Mr. **Gunter**. In my opinion, he would have, yes, sir.

Mr. **Oberstar**. Well, let's look at the remand hearing in the Behensky consolidated cases that began in August 1984. The agency again wanted to place Mr. Miller on the witness stand as its principal witness on the preparation and modification of documents used as the basis for controllers' firings. You have the exhibit in front of you. [Exhibit 6] In its brief in support of the motion to permit Mr. Miller's testimony, the FAA claimed, "Mr. Gunter, as the board pointed out, had no firsthand knowledge of how the records were kept during the strike."

"Mr. Gunter had no firsthand knowledge of how the records were kept during the strike." Do you agree with that?

Mr. **Gunter**. I agree to the point that I was not involved in the details of every little detail of all seven areas of what was going on and how they were doing things. I was familiar with the process.

Mr. **Oberstar**. Had you seen the documents?

Mr. **Gunter**. Had I seen which documents, sir?

Mr. **Oberstar**. Documents that were involved throughout this whole recordkeeping process, in the recordmaking process.

Mr. **Gunter**. In the final review.

Mr. **Oberstar**. Now, in FAA's brief of February 29, 1984 [Exhibit 7] we find an affidavit from Mr. Miller in which he says, "During the period commencing August 3, 1981, and continuing for the duration of the strike, I instituted changes to the method of keeping certain official facility records."

The affidavit continues, "I instituted changes in the method used to make and preserve facility sign-in logs, watch schedules, time-and-attendance records. These changes were done at my direction and were carried out either by myself or persons delegated by me to perform them."

Those statements, are they accurate? Do they accurately reflect the nature and extent of Mr. Miller's responsibilities in the war room up until the time the final removal letters were sent?

Mr. **Gunter**. Sir, I would say that if I were out of the building and the deputy was out and Mr. Miller was left in charge as acting chief, then that would be accurate. And to the best of my knowledge, that did take place.

Mr. **Oberstar**. So that reflected the responsibilities of Mr. Miller in the war room during the time after removals and up until adverse-action files were sent from the Great Lakes Region Office to the MSPB; is that right?

Mr. **Gunter**. Sir, the best of my knowledge is those types of changes took place on the control room floor.

Mr. **Oberstar**. What types of changes?

Mr. Gunter. The method of the way they were keeping the records of who was reporting to work and who was not reporting to work.

Mr. Oberstar. There is a further affidavit executed by Mr. Miller on August 13, 1986 [Exhibit 8] in which he states, "During the period of time alleged in the complaint—and this was the time period in the weeks immediately following the August 1981 strike—my involvement with the recordkeeping process regarding documents related to the adverse actions against the controllers at the Center was at the direction and order of the chief and was in accordance with his instructions."

Further, excerpts from an August 14, 1986, affidavit executed by Mr. Henry D. French, deputy chief of the Chicago Center at the time of the strike. [Exhibit 9] Mr. French states, "I was present when the chief of the Chicago Center, George Gunter, instructed Mr. Miller to work with the records relating to the controllers who were fired during the strike. Mr. Miller's involvement with the recordkeeping process regarding the documents related to the adverse actions against the controllers was at the direction and pursuant to the instructions of the facility chief, Mr. Gunter."

How do you reconcile these representations and assertions? Who actually was in charge of the war room at the Chicago Center, and who directed its day-to-day activities in the preparation, review, and amendment—as the FAA calls it—of the documents used to justify controllers' firings?

Mr. Gunter. I was in charge of the war room. The general movement within the war room in gathering documents and putting the files together, Mr. Miller was very involved in that and so was Mr. Erickson. And as far as any one person other than me being in charge, there was none. I did not designate anyone to be in charge.

Mr. Oberstar. Who was in there on a day-to-day basis?

Mr. Gunter. The gentlemen that I mentioned in my opening statement.

Mr. Oberstar. Mr. Miller.

Mr. Gunter. Yes, sir.

Mr. Oberstar. Mr. Miller was the one who spent nearly full-time in the war room?

Mr. Gunter. I don't know about full-time, but he spent a lot of time there, yes, sir.

Mr. Oberstar. Substantial. How much time did you spend in the war room?

Mr. Gunter. My time in the war room was late afternoon, early evening, is the hours that I spent in there.

Mr. Oberstar. You were in there. You were there during times when documents were being reviewed?

Mr. Gunter. Yes, sir. I was reviewing the documents. That was my purpose for being there.

Mr. Oberstar. Then you should have fairly substantial knowledge about these documents and what happened to them.

Mr. Gunter. I was—the file itself, I would have knowledge of those files in front of me at that particular time, knowledge of those.

Mr. Oberstar. When we say, "Who was in charge," maybe that's a matter of semantics. You were in charge of that, as you said. By that do you mean that you had the ultimate responsibility but that Mr. Miller was in the room directing activities, or do you mean that you were in charge and in the room, or just what do you mean?

Mr. Gunter. I mean that I had final authority over the total facility, including that room, in the activity.

Mr. Oberstar. Let me come back to my original question. Who was in charge of that room? Who was directing that particular office? Was that Mr. Miller?

Mr. Gunter. Mr. Miller was involved in it, and others, sir. I did not designate any one individual to have final say-so over anything in that room.

Mr. Oberstar. Well, you don't just leave an operation like that leaderless. Somebody has to order the coming or going of people, and someone has to be overseeing the overall activities and the changes in documentation. Who was that? You didn't designate anyone; they were all chiefs?

Mr. Gunter. Yes, sir, within their own rights. Mr. Pender was in and out quite often with his people in looking or preparing documents for the proposed removal, putting the files, the final files together, the letter that was to be mailed out.

Mr. Oberstar. Well, how long did Mr. Pender operate in the war room?

Mr. Gunter. He was—he was in and out as long as we had the war room there, but again, to my recollection, I think Dick—I believe Dick changed jobs later, a while after that, so I am not sure of that timetable.

Mr. Oberstar. Well, we understand that Mr. Pender left the Center September 13.

Mr. Gunter. That date sounds good to me, sir, because I don't recall the date.

Mr. Oberstar. And the war room lasted until at least November.

Mr. Miller, we have not focused on your activities during this period of time. Let's take a moment to review your role in the war room. Describe for the subcommittee your responsibilities during the time which the war room was operating; and secondly, respond to the question I asked earlier of Mr. Gunter: who was in charge of that war room? Was it leaderless? Was everybody operating on their own? Go ahead.

Mr. Miller. Mr. Chairman, as far as the responsibilities, Mr. Gunter had asked me to set up a room so that we would have the files in one central location. And in the responsibilities to establish the room, I had taken that responsibility to establish it and to obtain a copier in the room and to direct some of the logistic activities in reproduction as well.

As the in-charge per se, I was not the supervisor of any of the people in the war room. Mr. Gunter retained the ultimate responsibility for the operation. But I did direct some of the logistics activities in the room.

Mr. Oberstar. Did you have a desk in that room?

Mr. Miller. Yes. I believe there were three desks in the room, and I used two and/or all three of them at various times in there, yes.

Mr. **Oberstar**. Did you work on preparation of and amendment of sign-in logs in that room?

Mr. **Miller**. Yes. Yes, sir, I did.

Mr. **Oberstar**. Who assigned you those responsibilities?

Mr. **Miller**. In just the normal occurrence of accomplishing them, I may have assumed some of these. I don't know that there was a specific direction by Mr. Gunter that said, "Your responsibilities are to prepare this specific document."

Mr. **Oberstar**. But harking back to your affidavit of August 1986, you said that you were directed by Mr. Gunter.

Mr. **Miller**. To establish the room, yes, sir.

Mr. **Oberstar**. Is that all you do is just establish a room?

Mr. **Miller**. That was the only portion that I referred to in the——

Mr. **Oberstar**. The instruction did not carry further as to what was to occur in that room, from Mr. Gunter? You say Mr. Gunter gave you no further direction than that, to establish the room?

Mr. **Miller**. I don't recall specific direction as to what my responsibilities were, no.

Mr. **Oberstar**. Let me help you with your affidavit of August 13, 1986. "During the period of time alleged in the complaint, my involvement with the recordkeeping process regarding documents related to the adverse actions against controllers at the Center was at the direction and under the order of the chief and was in accordance with his instructions." Signed "Robert L. Miller."

That is taken from the case of Peter T. Nyquist, a case pending in the U.S. District Court, Northern District of Illinois, Number 86–C–2352.

There is further affidavit from the Nyquist case, by Mr. French. Mr. French says, "I was present when the chief of the Chicago Center, George Gunter, instructed Mr. Miller to work with the records relating to the controllers who were fired during the strike." Signed "Henry D. French," 14th day of August 1986, also taken from the Nyquist case before the U.S. District Court, Northern District of Illinois, Number 86–C–2352.

Now let's come back to who issued orders and who had responsibility and for what.

Mr. **Miller**. I believe, in my statement, I said that Mr. Gunter directed that as an assembly point for the documents, yes. And in that respect, he gave the direction that the documents were to be kept and retained there and not scattered around the building in the various offices.

Mr. **Oberstar**. But you said, "During the period of time alleged in the complaint, my involvement with the recordkeeping process regarding documents related to the adverse-action case was at the direction and order of the chief in accordance with his instructions."

That is a rather broad responsibility. What did you think was your responsibility in that office?

Mr. **Miller**. Well, after the formulation, Mr. Gunter said to work in the war room, and I think that was general and inclusive of whatever needed to be done——

Mr. **Oberstar**. What needed——

Mr. MILLER [continuing]. Other than—excuse me—other than the final review, sir. That was his responsibility.

Mr. OBERSTAR. What needed to be done in that room with those documents?

Mr. MILLER. We had to assemble the documents, put the packages together from the individuals—for the individuals' files. We had to accumulate additional information for Mr. Gunter's review. We had to amend or correct documents that were not done on the floor because the supervisors were working traffic and not able to accomplish the administrative tasks. We had to assemble packages to be sent to the Regional headquarters for MSPB files. We had to amend T&As.

Mr. OBERSTAR. You use the editorial "we." Did you specifically amend documents?

Mr. MILLER. Yes, I amended some.

Mr. OBERSTAR. Did others at your direction amend documents?

Mr. MILLER. Yes.

Mr. OBERSTAR. Did others amend documents not at your direction?

Mr. MILLER. I imagine they did. I can't attest positive or negative to that. But if Mr. Gunter had assigned Mr. Erickson to correct something, yes. That was not at my direction; it would have been at his.

Mr. OBERSTAR. Did Mr. Gunter direct other people then to amend documents?

Mr. MILLER. Yes.

Mr. OBERSTAR. Did you control air traffic at this time or any time in the period of the strike on through the end of 1981?

Mr. MILLER. The first two days, I was on the floor and involved in a sector during one period of time.

Mr. OBERSTAR. How would that be verifiable?

Mr. MILLER. By the people on the floor. The supervisors that were on the floor.

Mr. OBERSTAR. By sign-in logs?

Mr. MILLER. No, sir, I did not—I was assigned administrative and did not sign in.

Mr. OBERSTAR. Didn't sign in. Well, since you didn't sign-in on the sign-in log, were you assigned duty, or how did you come to have that responsibility for directing air traffic?

Mr. MILLER. The particular instance that I am speaking of, the individual had been on a sector that was relatively busy for a prolonged period of time and needed to go the restroom, and I relieved the manual position while he went to the restroom.

Mr. OBERSTAR. For just that very brief period of time?

Mr. MILLER. Well, there was two instances in one particular shift that were involved that I can recall.

Mr. OBERSTAR. Mr. Erickson, what were your war room assignments?

Mr. ERICKSON. Specifically, Mr. Chairman, my assignment was to review the oral reply summaries as they came back from the hearing or the oral reply, to review those. And if there were some indications in there on the part of the controllers that were going through the oral replies—for instance, if they made an allegation or they made a statement that they had talked to a specific supervisor or a facility officer about any specific thing with regard to their status—I would then go to that official and ask them for a statement as to what their recollection was with the conversation with that individual on a specific date, and get a statement from them.

Mr. **Oberstar**. Your responsibility, then, or among your functions, at least, there was the adequacy, reviewing the adequacy of documentary information supporting removal actions?

Mr. **Erickson**. Yes, sir.

Mr. **Oberstar**. Including communication from supervisors about cancellation of controllers' annual leave?

Mr. **Erickson**. Yes, sir.

Mr. **Oberstar**. Did you initiate those steps, or did you carry them out at the direction of Mr. Gunter?

Mr. **Erickson**. Well, Mr. Gunter gave me the original responsibility for that. That really was my specific job.

Mr. **Oberstar**. How long did it take for an area supervisor to prepare the communications you requested and documents you needed and return that information to you?

Mr. **Erickson**. Well, it could take varying amounts of time. Sometimes the supervisor was on that particular day, you would go to him and indicate that you needed this statement, and he could have that done possibly that day, at which point you would take it—or I would take it—and get it typed by one of the clericals that was also working in the war room or in another office in the facility, take that back to that supervisor, ensure that the statement that he—that his handwritten statement was identical to the one that was typed—have him sign it, and bring that then to the attention of Mr. Gunter in one of the packages that we had prepared. In other instances——

Mr. **Oberstar**. Right.

Mr. **Erickson** [continuing]. It could take as long as three, four, five days because of the rotating shifts, the nature of the work schedules that the people were working on.

So it did become somewhat of an administrative process of trying to keep track of who was working, which statements I needed, because the oral replies were coming back, you know, quite rapidly.

Mr. **Oberstar**. Did supervisors provide you with more than one memo about any individual controller, and were those memoranda dated, and were they signed? Were they always dated, and were they always signed; or were some of them not dated and some of them not signed?

Mr. **Erickson**. I have no recollection of that, sir. Generally, I tried to have a date put on them. Generally, the date, as I recall, the date that they were typed—I am not sure of that—and generally tried to have them signed. But I can't say with all certainty that every one of them was dated and signed.

Mr. **Oberstar**. Now, reflecting back on earlier questions and testimony about notations made on statements about further information required, in deciding what documentary information might be required, did you review the oral-reply summary forms completed by hearing officials? Did you review all of them, some of them, random?

Mr. **Erickson**. I—I would venture to say that I reviewed most of them. I can't say that I reviewed all of them.

Mr. **Oberstar**. Did anyone else review those forms?

Mr. **Erickson**. That I don't know, sir.

Mr. **Oberstar**. Anyone else review them while you were in the room? Did you notice any other person reviewing those forms?

Mr. **Erickson**. Not—not while I was there. But I was not in the—you know, I was not in the room all the time.

Mr. **Oberstar**. After reviewing the forms, what did you do?

Mr. **Erickson**. After reviewing the form, I would, well, depending on the situation, if it was a clear-cut case of a controller making a statement that he had had a conversation with an official, that was pretty clear-cut. I would then go to that official and ask for a statement relative to that conversation without indicating what the reply was.

Mr. **Oberstar**. Did you ever make any entries in the sign-in logs?

Mr. **Erickson**. In the sign-in logs?

Mr. **Oberstar**. Did you make any entries on the sign-in logs?

Mr. **Erickson**. Yes, sir.

Mr. **Oberstar**. What was the nature of those entries?

Mr. **Erickson**. I believe in four controller cases I made entries where the names of the individuals, after checking the work schedules, were not entered. I then——

Mr. **Oberstar**. You entered names of controllers?

Mr. **Erickson**. Yes. I entered the printed name, you know, like you would take the name off of the—off of the work schedule.

Mr. **Oberstar**. What other documents or what other information did you refer to or rely upon in making such entries?

Mr. **Erickson**. Basically the—basically the work schedule and whether the 7230-4, or the sign-in logs, were—you know—were in compliance or were the same.

Mr. **Oberstar**. All right. I want to direct your attention to two screens over here and to look at—and we will distribute to you—an oral-reply summary form filled out by hearing official Leroy R. McCarthy. It summarizes the oral reply of controller Peter J. Sober. We want to know if you have ever seen it before. [Exhibit 10.]

[Pause.]

Mr. **Oberstar**. Have you seen it before? Do you recognize this?

Mr. **Erickson**. Yes, sir.

Mr. **Oberstar**. Now, I want you to look at two copies of a sign-in log dated August 7, 1981. That covers the shift 0700 to 1500. [Exhibit 10.] Do you recognize those logs?

Mr. **Erickson**. Yes, sir.

Mr. **Oberstar**. Is there a distinction to be made between the two logs?

[Pause.]

Mr. **Erickson**. I don't understand the question, sir, as far as the distinction.

Mr. **Oberstar**. Somebody's name is entered on one and missing on the other.

Mr. **Erickson**. Oh, over there. Yes, sir, that's correct.

Mr. **Oberstar**. Controller Sober——

Mr. **Erickson**. Yes, sir.

Mr. Oberstar [continuing]. Is entered on one and not on the other. Otherwise, are they identical forms?

[Pause.]

Mr. Erickson. Yes, sir, they appear to be.

Mr. Oberstar. Did you print controller Sober's name, on the right-hand copy on the screen, on that log and add the designation "8 AWOL" in the right-hand column?

Mr. Erickson. Yes, sir, I did.

Mr. Oberstar. What documents did you rely upon in making that entry?

Mr. Erickson. The documents I relied upon were the work schedule indicating that Mr. Sober was on scheduled annual leave for that period of time.

Upon receiving the oral reply document back, it indicated, I believe—I haven't completely read this document—but I believe it indicated that Mr. Beeson and Mr. White, who were his immediate supervisors, had had a discussion with him about his annual leave prior to leaving on annual leave, in which case he was told that if a strike occurred, that his annual leave was to be cancelled and he was to return to the facility.

Upon receiving either a copy from Mr. Beeson—and I don't remember, quite frankly, whether or not I got a copy from Mr. White—I made the determination that his annual leave had been cancelled, and corrected the sign-in logs to indicate that, that fact, and essentially showed him in an AWOL status.

Mr. Oberstar. But in the Exhibit 10 in the document "Digest Prepared by Hearing Official Leo R. McCarthy," Mr. Sober says that as far as he was concerned, he was on approved annual leave for the entire period, on August 16, 1981—quoting from the document—he contacted Mr. Edward Froelich at the ARTCC about when to return to work and was told that he could not return because of his failure to return to work previously.

The summary says the conditions under which Mr. Sober's annual leave was approved should be reviewed to determine the validity of his statements, and yet he is entered on this sheet as AWOL.

Were there similar corrections to or notations on other sign-in logs, Mr. Erickson?

Mr. Erickson. With regard to Mr. Sober, yes, sir.

Mr. Oberstar. Did you add Mr. Sumner's name on Mr. Sober's log?

Mr. Erickson. No, sir, I don't believe that's my writing.

Mr. Oberstar. Who would have made such entry?

Mr. Erickson. I don't know, sir.

Mr. Oberstar. Would that have been made in the war room?

Mr. Erickson. I don't know that, sir. It's possible.

Mr. Oberstar. Who would have authority to make such an entry? What personnel in the war room or not in the war room would have had authority to make such entry?

Mr. Erickson. Well, I would think that Mr. Gunter and I—I really don't know, sir.

Mr. Oberstar. Would Mr. Miller have had authority to make such entry?

Mr. ERICKSON. I don't know what charge Mr. Miller was given, sir, specifically.

Mr. OBERSTAR. Mr. Miller, Mr. Gunter has already testified about his activities in the war room both during and at the conclusion of the oral reply hearings. What were your responsibilities? Let's go back to this again. Would you have made such entry?

Mr. MILLER. Yes, sir.

Mr. OBERSTAR. You would have?

Mr. MILLER. Yes.

Mr. OBERSTAR. What would you have relied upon in making such an entry?

Mr. MILLER. May I review the document?

Mr. OBERSTAR. Yes, certainly.

[Pause.]

Mr. MILLER. A couple of ways that could have occurred: If he was omitted from the original sign-in document inadvertently either at the watch desk or in a specific area of operation, going to the watch schedule and seeing the omission, it would have been amended to show his scheduled work shift. Or, at the direction of the chief, if he said during this period of time the individual was absent without leave, the documents would have been amended on his determination that he was not on approved annual leave or sick leave, if that was the case here, which I don't know.

Mr. OBERSTAR. Well, if dismissal notices were sent based upon sign-in logs, how did Sober and Sumner receive such notices?

Mr. MILLER. How did he receive the notice of dismissal?

Mr. OBERSTAR. Yes. How would they have received notice of dismissal when their names were not on the original sign-in logs?

Mr. MILLER. For the people that did not show up, some of them were omitted clerically by the area supervisors on the first few days. That is what later stimulated the change in recordkeeping.

Mr. OBERSTAR. These are official documents, are they not?

Mr. MILLER. That's correct.

Mr. OBERSTAR. And changes to official documents is a very serious matter.

Mr. MILLER. I believe they are changed daily, sir. They were then and still are today changed on an ongoing basis. It's a dynamic document that reflects the ongoing shifts at the Center, and they are changed quite regularly.

Mr. OBERSTAR. Yes. And this one, apparently, was changed as late as August 31.

Mr. MILLER. I cannot verify when the name was added, but it apparently was added after the initial document was Xeroxed, yes.

Mr. OBERSTAR. That is a very considerable time after the strike and shows a rather lengthy period of time in which to make changes on records, records which later were called contemporaneous records. It is not a contemporaneous business record if it was changed weeks later.

Mr. MOLINARI. Mr. Chairman.

Mr. OBERSTAR. Mr. Molinari?

Mr. MOLINARI. Would you yield for a question or a statement?

Mr. OBERSTAR. Yes.

Mr. MOLINARI. It's interesting to hear what Mr. Miller just said—and I would like to just read one statement from Admiral

Engen's letter to the chairman, which was circulated to all of us on the subcommittee.

He says, in part, "I want to stress that we are the first to acknowledge that certain aspects of the recordkeeping practices associated with the processing of removal cases at the Chicago Center were inadequate and not in keeping with what we expected. Clearly, we would have preferred that greater attention had been focused on maintaining current and correctly annotated sign-in logs. We also do not believe that records should subsequently have been changed by our personnel to reflect an individual's absence from work."

The Administrator of the agency making this statement, and listening to you saying that is still being done today is something that I find quite astounding.

[Pause.]

Mr. OBERSTAR. We have a recorded vote in progress on the House floor. The second bells have just rung. This may be an appropriate time to recess the hearing so that witnesses may have opportunity for lunch. Staff will make arrangements for them to use the Rayburn cafeteria.

We will resume at no later than 1:30.

[Whereupon, at 12:09 p.m., the subcommittee was recessed, to reconvene at 1:30 p.m., this same day.]

AFTERNOON SESSION

Mr. OBERSTAR. The subcommittee will come to order and will resume its sitting. I note for the record that all the witnesses have reappeared. I just want to remind the witnesses that they are still under the oath that they had taken at the outset of the session, which holds for the entire hearing.

Mr. Gunter, before we broke for the vote and lunch, we were reviewing the case of controller Sober. We identified on his oral reply summary which is prepared by the hearing official the notation that the watch schedule showed Mr. Sober on annual leave and that his name was not on any sign-in log of August 2 through 8, 1981.

That was confirmed by reference to the original August 7, 1981, sign-in log which you were shown and which was projected on the screen and which you have had an opportunity to review more extensively.

You testified earlier that sign-in logs and watch schedules, among other factors, formed the basis for decisions to send proposed removal letters. You also testified to that same information in proceedings before the Merit Systems Protection Board.

I want to read, and I want you to listen carefully, that testimony that you gave at the hearing in the matter of former air traffic controllers:

> *Question*. Okay. Now, Mr. Gunter, what action did you take when an individual failed to report for their first shift, for their deadline shift after the moratorium?
>
> Answer. We would process the proposed removal letter.
>
> *Question*. Okay. And what were they charged with in this proposed removal letter?
>
> Answer. Participating in a strike and being AWOL.

Question. How did you go about it? What method did you use to determine that it was time to issue a proposal letter to a certain individual?

Answer. We would determine the moratorium shift starting after 10:00 on August 5th, when a person would miss that shift or their deadline shift, then we would mail out a proposed removal letter.

Question. How did you verify that a person had missed their shift?

Answer. By the personnel sign-in logs in each area. A person failing to sign in for his shift.

Question. And a personnel sign-in log, is this a document kept in the ordinary course of business at your facility?

Answer. Yes.

Given your responses to those questions, and in light of the evidence before us today, how could Mr. Sober have been sent a proposed removal letter? Wasn't he, in fact, sent a letter simply because he wasn't there, without regard to what his official records showed?

Mr. GUNTER. Mr. Chairman, Mr. Dick Pender was in charge of that particular part of the process, and I honestly cannot sit here and tell you exactly how that happened. I know that he made up a proposed removal letter in this case, and I signed it as the guy not being there at work.

I did not personally get involved into the detail. I assumed that he was looking at the posted watch schedule and the sign-in logs.

Mr. OBERSTAR. But you said that you reviewed all the materials before you made any decisions.

Mr. GUNTER. The final decision as far as removal, not the proposed removal.

Mr. OBERSTAR. On what authority did Mr. Pender issue the letter?

Mr. GUNTER. He prepared the letter on my authority.

Mr. OBERSTAR. He was acting in that respect at your direction. Was he operating in the war room at that time?

Mr. GUNTER. No, sir. He was operating in the personnel department, where his office was located.

Mr. OBERSTAR. He did not operate in the war room?

Mr. GUNTER. Not per se, no, sir.

Mr. OBERSTAR. What was his personnel level, Mr. Pender's?

Mr. GUNTER. He was the manager of the personnel department there.

Mr. OBERSTAR. Manager of the personnel department?

Mr. GUNTER. Yes. Or supervisor of the personnel department.

Mr. OBERSTAR. I think we have some information that showed he was a GS-9.

Mr. GUNTER. Yes, sir.

Mr. OBERSTAR. Fairly low level to have that kind of authority.

Mr. GUNTER. Well, his authority was to prepare the proposed removal, fill in the dates.

Mr. OBERSTAR. Just trying to understand now what the circumstances were, was that new authority given him, or is that authority vested in him by virtue of his office?

Mr. GUNTER. That was both invested by me, delegated to him, and his office was used for that purpose, to do personnel actions. And I am the one that ended up issuing the letter.

Mr. OBERSTAR. Is there a standard procedure for changing such records at centers of the FAA and other facilities? Prior to 1981, if a record had to be changed, what was the process by which that change took place?

Mr. **Gunter**. That change initially would take place in the area where the employee was working. Normally, the supervisor in charge of the shift would make the change.

Mr. **Oberstar**. Yes. And was it customary or is it a part of the rules of procedure of the agency for the person whose record is thus being changed to be called in and notified of the change and given an opportunity to comment on it?

Mr. **Gunter**. Normally, that would take place with the conversation between the supervisor and the employee, so, yes.

Mr. **Oberstar**. There is a procedure to follow in making changes, and that procedure was not followed here, was it?

Mr. **Gunter**. No, sir. We were not in touch with—to the best of my recollection.

Mr. **Oberstar**. How many people at various times operated in the war room?

Mr. **Gunter**. I would estimate anywhere from six to ten.

Mr. **Oberstar**. And were they all FAA personnel at all times?

Mr. **Gunter**. To the best of my knowledge, yes, sir.

Mr. **Oberstar**. There were no personnel working in the war room who were not FAA personnel at the time they worked there?

Mr. **Gunter**. To the best of my knowledge, they were all on the payroll of the FAA.

Mr. **Oberstar**. I cannot conceive of a circumstance in which somebody is not in charge in a situation like this. Again, I want to come back because I still don't feel that we have a complete, clear record on who was in charge and who had responsibility. Who instructed changes to be made when these documents were reviewed in there? Now, you spent some time in that room, you testified earlier, but you didn't spend full-time there. Mr. Miller spent virtually full-time there. Let's hear from you what conversations or discussions took place before the changes were entered onto this record that is now projected on the screen?

Mr. **Gunter**. Yes, sir. May I go back and try to clear up some of the misunderstanding about who is not in charge or——

Mr. **Oberstar**. That's what we're trying to get at.

Mr. **Gunter**. Right. Prior to identifying a centralized room to consolidate all the files, this type of work was being done in two or three different places. So immediately it was identified that we needed to be able to consolidate and bring everything together.

Now, people were already working in particular areas with these files. So we consolidated, identified the room which became the war room. So when we consolidated the files the people that had been working with these files came with them to the room. So they already knew the process and what needed to be done. Now, to the——

Mr. **Oberstar**. Just out of curiosity, why was it called "the war room"?

Mr. **Gunter**. I don't know. I honestly don't know.

Mr. **Oberstar**. Did that term sort of characterize the mindset that appeared at the time?

Mr. **Gunter**. You know, sir——

Mr. **Oberstar**. It certainly would be understandable.

Mr. **Gunter**. Yeah. I was just going to comment. Maybe it stemmed from the hostility that was taking place outside of the building and having to go back and forth. That's the only conclusion that I can put to that.

Mr. **Oberstar**. Now proceed.

Mr. **Gunter**. Okay, sir. Now, again—again to the second part of your question there—when I would review a case and I was looking at it and I found a discrepancy, a question mark in my mind, I would refer that to whoever was in the room at the time to do the follow-up and to bring back whatever I was asking for as far as the true facts are. If that meant amending something after I had the facts, then I gave that instruction.

Mr. **Oberstar**. Who gave each of these—before this whole thing was consolidated, who was in charge? Who gave orders to the separate elements before they were consolidated in the war room? Was that again under your direction?

Mr. **Gunter**. Yes, sir, under my general direction of the process and what needed to be done.

Mr. **Oberstar**. How long after the strike did it take for all the actions to be consolidated into the war room, the former PATCO office?

Mr. **Gunter**. I don't recall. I would estimate three days.

Mr. **Oberstar**. A fairly short time?

Mr. **Gunter**. Yes, sir, I think so.

Mr. **Oberstar**. Now, as you moved in and out and you saw all these people busy and you saw all these documents, did you see changes being made in the logs? Did you observe people making changes in the logs?

Mr. **Gunter**. I honestly don't recollect seeing any changes being made per se, no, sir.

Mr. **Oberstar**. You did see changes after they were made?

Mr. **Gunter**. I would say so, yes, sir.

Mr. **Oberstar**. Did you inquire as to what was the basis for changes made of the kind that we have displayed on the board?

Mr. **Gunter**. The only ones that I would inquire about are the ones that I would have directed that I became aware of in my review that I knew was taking place at the time.

Mr. **Oberstar**. Mr. Miller, you spent a great deal of time in the war room.

Mr. **Miller**. Yes, sir.

Mr. **Oberstar**. Many hours. We will be discussing your time spent in that room later on. Who would have made changes? What personnel, and what would be their authority to make changes of the kind that occurred here?

Mr. **Miller**. In the addition of names or——

Mr. **Oberstar**. Yes.

Mr. **Miller** [continuing]. Making of the AWOL?

Mr. **Oberstar**. Addition of names, marking AWOL. Would you have made such changes?

Mr. **Miller**. Yes, sir.

Mr. **Oberstar**. You did. Mr. Erickson testified earlier that he did.

Mr. **Miller**. Yes, sir.

Mr. **Oberstar**. What other people?

Mr. **Miller**. I believe, Mr. Cullerton—and at various times Mr. Cullerton worked in Mr. Pender's office with myself the first few days of the strike, and then he was over as a hearing official and when he returned to the facility he worked again in the war room, and Mr. Cullerton may have made some of the changes. And possibly, Mr. Peterson.

Mr. **Oberstar**. What documentation, if any, did they use when making such changes, or what information did they rely upon when making these changes?

Mr. **Miller**. The types of information, the findings of the chief on preliminary or cursory examination, in some cases, or reviewing the documentation from the oral hearing officials. Initially, there was general guidance come down that people that did not report back and had been told to report back, and I believe both Mr. Cullerton and myself did make some changes in the early stages based on this type of information coming to the facility.

Mr. **Oberstar**. Now, you said information coming to the facility. From whom?

Mr. **Miller**. In general, some of it came in in the form of telcoms from the Region, and others came in in specifics as to the operational guidance received in GENOTS and RENOTS.

Mr. **Oberstar**. Did any of the people making such changes come to you with a document in hand with substantiation for their intention to change from annual leave to AWOL and present such evidence, "Here is the basis for my decision"? Or did each one operate independently?

Mr. **Miller**. At the beginning, the first three to four days of the strike, I believe that Cullerton and myself and Dick Pender were receiving general guidance and operated in most of the cases in Mr. Pender's office adjacent to the chief's office.

And did anyone—I'm sorry?

Mr. **Oberstar**. Did anyone come to you and ask you, "Mr. Miller, I have the case of," let's say, "controller Sober. He's listed for annual leave and we're going to change that to AWOL, and here's why we're going to do that"? Did any discussion like that take place?

Mr. **Miller**. I believe Mr. Cullerton and I had discussed this in conjunction with Mr. Pender. I don't recall any specific instance or any isolated case that he came and asked the question, "Should I change this?" But we had agreed upon the fact that they were not there and that the directive said that they were AWOL and be issued a letter of proposal.

Mr. **Oberstar**. The directive? Which directive was that? Was that one of the documents we have referred to already?

Mr. **Miller**. I am not sure. There were multiple directives. We received clarification on the Presidential moratorium to return to work, and various directives came down. I do not have them all here now. Mr. Pender had a folder with multiple directives in that we would refer to.

Mr. **Oberstar**. You had roughly 456 controllers who walked out; correct?

Mr. **Miller**. I believe it was higher than that.

Mr. **Oberstar**. And you had, therefore, some multiple of 456 records to go through?

Mr. MILLER. Yes, sir.

Mr. OBERSTAR. So you had a large recordkeeping job, and I am sure, with an intention to be scrupulous and careful, you would have paid very meticulous attention to details because the decisions that you were making affected the livelihood of those individuals and their character, their future ability to work. So you would have been very careful about those changes.

But it appears that there was no process set up, no review process internally, just if the controller was scheduled for work and didn't show, regardless of whether it was annual leave or whatever other purpose, that person was determined to be AWOL. Is that right?

Mr. MILLER. Generally, that's true, yes.

Mr. OBERSTAR. That's the procedure?

Mr. MILLER. In——

Mr. OBERSTAR. Well, let's go back to testimony again from the proceeding before the Merit Systems Protection Board. Now, this is a question of Mr. Gunter. So we will ask Mr. Gunter if that is the process that took place. The question asked of you, was "Did you take the sign-in logs or the watch schedules or the T&A and alter them or change them or correct them in order to support the removal that you had already taken? Did you do that?

Answer: "No."

Question: "Did anyone at your facility do that?"

Answer: "No. To the best of my knowledge, no."

At the MSPB hearing, you said no one at the facility changed the sign-in logs, the watch schedules, or the T&A, and today you are saying, "Yes, there were changes made," and you are responsible for them, and we have testimony of the two people at the table who said they did make such changes.

How could you have made the statement I have just read at the MSPB hearing?

Mr. GUNTER. I would have to say that in that question in the approach that was being taken, that my best recollection of what you are looking at there, is that I interpreted—which might be right or wrong—that what he was asking was: did we arbitrarily go and change something to make it fit a decision. And, no, we didn't do that. He didn't ask me if mistakes were made and we amended to correct mistakes to make it more accurate.

So I would say confusion on my part as to what he was asking there.

Mr. OBERSTAR. Did you ever alter any records yourself? Did you make any amendment, as FAA euphemistically calls it? Did you amend any record yourself?

Mr. GUNTER. No, sir, none that I recollect, no, sir.

Mr. OBERSTAR. So you are answering truthfully so far as yourself is concerned, but when the question is asked, "Did anyone at your facility do that," and "that" refers to take the sign-in logs or the watch schedules or the T&A and alter them or change them or correct them in order to support the removal that you had already taken, your answer is, "No"?

Mr. GUNTER. Sir, I think the key there is the "to support the removal." And that is just not true. We—I did not do that, order it to be done, to support a removal.

Mr. **Oberstar**. Well, why then were the records changed? To me that is a very, very narrow semantic difference, but let's accept that. Why then were the records changed?

Mr. **Gunter**. To make them accurate according to what the true facts were, according to the posted watch schedule.

Mr. **Oberstar**. What was the purpose of making them accurate then?

Mr. **Gunter**. That's the way we had always done business. If a mistake was made, you would amend it.

Mr. **Oberstar**. What did you think was going to be done with these records? Was it just going to be reposited in an archive for posterity?

Mr. **Gunter**. No, sir.

Mr. **Oberstar**. You knew they were going to be used in proceedings against these controllers. You weren't doing this just as a Federal Diogenes searching for truth.

Mr. **Gunter**. Sir, to be quite honest with you, at that particular time, my mind was not on MSPB hearings. I hadn't even thought about those hearings. And I was not planning as to down the road as to what was going to take place. That was never in my mind at the time.

Mr. **Oberstar**. These were records that reflected career performance of Federal government personnel, and they were just, as we have seen so far in the testimony, there were wholesale changes made to those records.

We will have to suspend. We have a recorded vote in progress on the House floor. We will recess for 15 minutes.

[Recess.]

Mr. **Oberstar**. The subcommittee will resume its sitting.

When we broke for the vote, we were discussing the question of why changes were made in the controller records. Mr. Miller, you were in the room, the war room. You have said you changed records. What was in your mind? What were you thinking about when those changes were made? Why, in short, did you make changes to those records?

Mr. **Miller**. To correct the records to properly reflect scheduled shift, was one of the reasons. At Mr. Gunter's direction, if he determined an individual was not on authorized leave, we would change that type. If a shift had been omitted, if the supervisors on the floor had neglected to put someone on a sign-in log from the watch schedule, I would add the name in that case so that the records were correct and proper.

Mr. **Oberstar**. When, in accordance with earlier testimony you and others have given today, when for example you did not sign in or, to control traffic for that brief period of time and others did not sign into the war room, when were those changes made, and by whom?

Mr. **Miller**. When were—I am not sure I understand what you mean, Mr. Chairman.

Mr. **Oberstar**. Well, earlier, you said that you didn't sign in. When was your record changed, and by whom?

Mr. **Miller**. My record changed? Oh, okay, the staff does not sign in. We don't sign in and out. The sign in and out is for the control room floor and the people that work——

Mr. Oberstar. Oh, I see.

Mr. Miller [continuing]. The eight-hour shifts, and we have a scheduled lunch break, and we work assigned schedule shifts.

Mr. Oberstar. Was there any consultation with supervisors on your part or on the part of Mr. Erickson or any of the others who made changes in records, any consultation with the supervisors of those controllers?

Mr. Miller. Yes. Numerous ones.

Mr. Oberstar. Well, did they come into the war room, or did you talk with them by phone, or how did you consult with them?

Mr. Miller. All different ways. As far as the initial few days of the strike, we would go up to the platform and talk on the platform with supervisors, with the watch supervisors and with area supervisors that were there, confirming the people were not there, had not called in. And we would record that down in Mr. Pender's office.

Later, in the war room, we would call supervisors down for statements and also go up and talk to them on the floor for statements.

Mr. Oberstar. What about the case of a controller scheduled for annual leave, would a supervisor have been aware of that person being scheduled for annual leave on that day?

Mr. Miller. I—a specific person?

Mr. Oberstar. Yes. Any particular individual, a supervisor who had control over or responsibility for a particular controller in his area, would that supervisor have been aware that that controller was scheduled for annual leave if that were the case?

Mr. Miller. Yes. In some cases that was true.

Mr. Oberstar. And did you ask supervisors whether the person was scheduled for annual leave?

Mr. Miller. Yes.

Mr. Oberstar. And the supervisor would respond, "Yes, the person was scheduled for annual leave." Then what next would you do?

Mr. Miller. In specific cases that involved annual leave, we would ask whether they had cancelled their annual leave or whether they had called in, and pursue it to see whether the individuals had been advised that their leave was cancelled.

Mr. Oberstar. Would you also ask supervisors if they attempted to contact the individual and actually made contact with the individual?

Mr. Miller. Yes, we did that in many cases.

Mr. Oberstar. And what occurred if the supervisor said, "We were unable to contact the individual controller scheduled for annual leave"?

Mr. Miller. There were different situations. Individually we would approach each one with the supervisor's recommendation whether he had specifically told him or not at the point—and I am speaking of the initial days of the strike. And I don't know exactly what time, but it was Tuesday or Wednesday the determination was made that if they were read the initial document that they were to report back to work, that their leave was cancelled in the event of a strike, and I believe we considered all of the annual leaves as AWOL.

Mr. Oberstar. Is it your understanding that supervisors knew the logs were changed?

Mr. Miller. Some of them did. Some of them changed the logs.

Mr. Oberstar. Some of them themselves were involved in the changing of logs?

Mr. Miller. Yes.

Mr. Oberstar. On the floor or in the war room or where?

Mr. Miller. On the floor. I am talking about the supervisors on the floor.

Mr. Oberstar. So not all changes were made in the war room; some changes were made on the floor.

Mr. Miller. That's correct.

Mr. Oberstar. The gentleman from New York, Mr. Molinari.

Mr. Molinari. Mr. Miller—could we flip back to that logsheet, please—if you were to see a logsheet similar to that which we have up there, and there was a name of an individual added, like on the left-hand side, the name of Sober in this case, and off to the right-hand column we have "8 AWOL," if there was an individual whose name was put there by mistake—that is, an individual who might have been working on another shift—and somehow some way somebody put his name up there with the legend off to the right-hand side "8 AWOL," would you have sent that controller the notice of dismissal?

Mr. Miller. If we researched it and he had not shown up for work, probably yes.

Mr. Molinari. Who would you research it with?

Mr. Miller. The other shifts and the supervisors.

Mr. Molinari. Is that what you did here with Mr. Sober?

Mr. Miller. I did not make that entry. I am not sure about Mr. Sober's entry.

Mr. Molinari. Let me ask you this. Did you rehearse your testimony before you came here today?

Mr. Miller. Rehearse it?

Mr. Molinari. Yes.

Mr. Miller. We did discuss it. I didn't rehearse it, no.

Mr. Molinari. Who did you discuss it with?

Mr. Miller. With the lawyers.

Mr. Molinari. When?

Mr. Miller. This morning; and yesterday we discussed the types of questions that would be asked.

Mr. Molinari. And before that?

Mr. Miller. Before yesterday, no.

Mr. Molinari. How about you, Mr. Gunter? Did you discuss this before today?

Mr. Gunter. Just yesterday.

Mr. Molinari. Just yesterday?

Mr. Gunter. Yes, sir.

Mr. Molinari. You didn't have any discussion this morning?

Mr. Gunter. This morning, too, yes.

Mr. Molinari. Okay. And before that, before yesterday, you had no discussions with the attorneys or anybody from FAA as to the testimony you were going to give?

Mr. Gunter. No, sir.

Mr. **Molinari**. Mr. Miller, I think it was you who said before, there were some six to ten people that worked out of the war room. Was that your testimony, or am I mixing it up?

Mr. **Miller**. No, but that——

Mr. **Molinari**. That's accurate?

Mr. **Miller** [continuing]. Can be relatively close, yes.

Mr. **Molinari**. All right. I am a little confused by the statements, and I think in the testimony was given today, I guess it was Mr. Erickson that used that number six to ten, and, Mr. Miller, you seem to agree with it.

Mr. Gunter, in your statement you talk about those who were processing the cases, and you mentioned, Mr. Gunter, you mentioned: Bob Miller, Dave Erickson, Dick Pender, Ray Cullerton, Pete Peterson, and Clyde Campbell. That's six. Mr. Miller testifies, in addition to himself there was: Dave Erickson, Clyde Campbell, Pete Peterson, and Ray Cullerton—mentioning five. Mr. Erickson mentions George Gunter, Bob Miller, Ray Cullerton, Pete Peterson, Beverly Miller, and Michelle Klinkhammer.

Now, we seem to have a difference of names here, and in any event the numbers don't add up. The names that I have read, do all of you admit—and I will ask you each individually—agree that every one of those names that I have read were in the war room? Mr. Gunter, first?

Mr. **Gunter**. At one time or another, yes.

Mr. **Molinari**. Mr. Miller?

Mr. **Miller**. Yes, and more.

Mr. **Molinari**. And more? Who was?

Mr. **Miller**. Marsha Divenere worked down there for a while. In the clerical people, I would request that they come in and do duplication as the work task required it, and I had used various clerical help. Marsha Wiest was another one.

Mr. **Molinari**. All right.

Mr. **Miller**. Michelle Klinkhammer, Ann Kelly, Cindy Zimmerman. I am going through the clerical people now that I had in at various times.

Mr. **Molinari**. Okay. Please do.

Mr. **Miller**. Margery Elliott, Verna Shenkel. I believe Connie Gugliemi was down doing some clerical tasks within the war room. Oh, I'm sorry, Bert Pable was another one, secretary in training. And I believe Mary Mays was also—had done some duplicating for one day or two down in the early part of the process.

Mr. **Molinari**. Any other names, Mr. Erickson?

Mr. **Erickson**. No, Mr. Molinari. The names that I indicated on my statement were the only ones that I recall being there when I was there.

Mr. **Molinari**. All right.

Mr. Gunter, do you know of any others other than what were mentioned?

Mr. **Gunter**. No, sir.

Mr. **Molinari**. How about Beverly Miller, was she present?

Mr. **Miller**. Yes.

Mr. **Molinari**. Tell me something. Was there a shredder in the building?

Mr. **Miller**. Yes. You are asking me? Yes, sir.

Mr. **Molinari**. Yes, I will ask you, Mr. Miller.

Mr. **Miller**. Yes.

Mr. **Molinari**. Was that shredder ever used?

Mr. **Miller**. Yes, it's used quite frequently.

Mr. **Molinari**. Was it used around the time the subpoena was issued in July—what's the date of the subpoena?

[Pause.]

Mr. **Molinari**. July 25 or July 26, was the shredder being used?

Mr. **Miller**. Are you speaking of last year?

Mr. **Molinari**. Last year, yes, when the subpoena was served.

Mr. **Miller**. Last year? I—sir, I don't know whether it was being used or not. To my knowledge, no. And if you are asking the question about were documents strike-related shredded, no.

Mr. **Molinari**. No, I wasn't asking that question.

Mr. **Miller**. To the best of my knowledge—oh, okay. I'm sorry. We used the shredder—excuse me, if I could explain—we use the shredder to shred classified material. We receive classified documents in the facility.

Mr. **Molinari**. I understand.

Mr. **Miller**. The shredder is there for that purpose.

Mr. **Molinari**. How often would it be used in the normal course of business?

Mr. **Miller**. Probably once a week.

Mr. **Molinari**. Now, you can't tell us your own knowledge then whether it was used on the 24th of July of 1986 or a couple of days thereafter, other than for classified material? Is that your testimony?

Mr. **Miller**. Yes. That is correct, sir.

Mr. **Molinari**. Mr. Erickson?

Mr. **Erickson**. I have no knowledge at all, Congressman, that the shredder was used. I did not use it, and I have no knowledge that it was used.

Mr. **Molinari**. How about you, Mr. Gunter?

Mr. **Gunter**. No, sir, I don't live there, and I haven't been there.

Mr. **Molinari**. All right. Now, Mr. Gunter, for a moment I would like to turn to the case of another controller, Carl Morse.

Would the staff please hand Mr. Gunter Mr. Morse's file? [Mr. Morse's file is retained in subcommittee file.]

[Pause.]

Mr. **Molinari**. Now, if you would look at your proposed removal letter, it appears to bear a date of August 8, 1981, and you signed it. And you said that Mr. Morse missed the 2300 shift on August 5. Is that correct?

Mr. **Gunter**. Yes, sir, that's what it says.

Mr. **Molinari**. Okay. Now, on August 27, Carl Morse had his oral-reply hearing. The oral-reply official wrote in his report to you that—it's on the second page of that, for your reference—"I noted that Mr. Morse's sign-on log for the 5th has approved annual leave. Yet his notice of proposed removal indicates that he failed to report to work on the 5th. In fact, the sign-on logs all indicate approved annual leave for August 3, 4, 5, and 6, 1981."

Do you have the graphic there that you can put out? Would you put that on first, please?

[Pause.]

Mr. **Molinari**. Now, Mr. Gunter, would you agree that that's the way the log must have looked on the day of Mr. Morse's hearing?

Mr. **Gunter**. I honestly cannot say, sir, that it was or it wasn't.

Mr. **Molinari**. Okay.

Mr. **Gunter**. I did not see the logs before they went over to the oral reply official.

Mr. **Molinari**. Does it seem likely—without putting you on the spot, because I can understand that it's difficult to give proof to everything that's there—does it seem likely that that's what it would have appeared to you when you examined the logsheet?

Mr. **Gunter**. If that were the log that was there, you're 100 percent correct.

Mr. **Molinari**. Well, let's assume it is.

Mr. **Gunter**. Then you are 100 percent correct.

Mr. **Molinari**. Let's assume it is. Despite the hearing officer's comments, you sent a letter to Morse on September 9, stating that, "I have given full consideration to your written submission on August 27, 1981, and your oral reply on August 27, 1981. I find that both of the reasons in the letter of proposed removal of August 8, 1981, are fully supported by the evidence and warrant your removal."

Given the oral-hearing report, how could you have sent this letter to Morse?

Mr. **Gunter**. I honestly don't recollect what was going through my mind at that time. I would have to take time and study everything in here and try to recollect, you know.

Mr. **Molinari**. Well, my understanding is that you would look at the file and, based on what was in the file, you would make a determination whether he should be dismissed or not. And I have given you the file. If you want to take a few minutes and look at the file to refresh your recollection, I would be perfectly willing to wait.

[Pause.]

Mr. **Gunter**. I will try to do the best I can here.

Mr. **Molinari**. I appreciate it.

Mr. **Gunter**. It's been a long time.

From what I am looking at here is that, yes, he was on annual leave. When he returned from annual leave, he makes the statement that he had been locked out. I assume he must have talked to somebody and they indicated to him that you can't return, as far as that goes.

But the data in the follow-up that came to my attention was that when he was due back on the 16th at 8:00 in the morning, he didn't show at the facility. He didn't come into the facility to say, "I'm back from annual and I want to go to work."

There was no contact with the facility before or after the strike started. The document that I have here from his supervisor——

Mr. **Molinari**. Mr. Gunter, maybe I should interrupt you. Sir, you are talking about information on the 16th. Your dismissal letter was sent on the 8th.

Mr. **Gunter**. That was the proposed removal.

Mr. **Molinari**. Yes. All right. Well, what basis did you have for that proposed dismissal notice?

Mr. **Gunter**. Excuse me.

[Pause.]

Mr. GUNTER. At the time the proposals were going out that Mr. Pender was handling, I was not reviewing the material at that time. I was not seeing the logs or reviewing at that stage or that early in the process.

Mr. MOLINARI. So what you are telling us then is that people who legitimately may have been on annual leave and regardless of whether they knew or didn't know that there was a strike, the dismissal notice was being sent out to all of them?

Mr. GUNTER. That's true.

Mr. OBERSTAR. If the gentleman would yield?

Mr. MOLINARI. I would be glad to yield.

Mr. OBERSTAR. At that point, attempting to reconstruct the circumstances, here is controller Morse, it could have been controller anyone, returning from vacation, gets a letter saying he has been dismissed or that notice of dismissal. In his mind, he is fired. Would you have let him if he had tried to come back to the facility that day?

Mr. GUNTER. To the best of my recollection, after he—I—I would have to study this. I am—I am not quite sure of the timetable here that I am looking at. I know that I have in my hand here from his supervisor that he was read the statement.

Mr. OBERSTAR. But he or anyone, any controller in that circumstance, having received, having been on annual leave, legitimately having taken a vacation, come back, got the letter, and had that person then made the effort to come back, would they have been let in?

Mr. GUNTER. After that period of time where they had to go through their oral reply, they first would have had to go through the oral reply.

Mr. OBERSTAR. No, no. I am talking about they would not have been let back in, they would have had to go through oral reply.

Mr. GUNTER. Yes, sir. That's true.

Mr. OBERSTAR. Well, if that's the situation, then why was he fired for not showing up? If the person made a good-faith effort to come back, had legitimately been on leave, realized or understood that he was on leave, made the effort to come back, was told "No." You know, I just don't understand this process.

Mr. GUNTER. Well, sir, I honestly cannot sit here and recollect everything back five-and-a-half years ago. But this is probably one of the areas where a misjudgment was made on my part and this case was settled and he got his job back.

Mr. MOLINARI. Yes. Yes. Precisely what I expected to hear. I see memos for the record, dated August 28, 1981, signed by Donald D. Beeson, where he indicated that Mr. Morse had annual leave approved through August 15, 1981, but on August 1 Mr. Billy Mingus tried to contact him, with no answer; on August 2 a Mr. Jack Wolfe tried to contact him and there was no answer.

Then I see another interesting memo signed by you, dated September 9, 1981, memo for record, "Carl Morse was a PATCO rep for individuals in their hearings at the Hilton Inn, which took place from August 13, 1981, through September 3, 1981. He represented 13 individuals during the hearing."

What does that mean?

Mr. Gunter. That is just documentation that I was instructed to document.

Mr. Molinari. Somebody instructed you to document people that were PATCO representatives and put that in a controller's file?

Mr. Gunter. Yes, sir.

Mr. Molinari. Who?

Mr. Gunter. It came from the Regional office.

Mr. Molinari. Who in the Regional office?

Mr. Gunter. I honestly don't recall.

Mr. Molinari. Was this part of the record that you would look at to determine whether a man should be dismissed or not?

Mr. Gunter. No, sir.

Mr. Molinari. It was not part of the record and it wouldn't be in the man's file? It's not in that file?

Mr. Gunter. Yes, it's there, but I did not use that to make my decision.

Mr. Molinari. You wouldn't look at that? You wouldn't look at that?

Mr. Gunter. Oh, I had—I had to see it, sir, but I didn't use that.

Mr. Oberstar. If the gentleman would yield, I would note that that memo for record is dated the same day that the final notice went out.

Mr. Molinari. Mr. Shewfelt, you have heard the testimony here. Mr. Gunter doesn't remember who it was from the Regional office that gave him that direction. Could you help us? Did you give him that direction, or do you know anybody from the Regional office that would have given such a direction?

Mr. Shewfelt. No, sir.

Mr. Molinari. Did you know that this existed, these type of memos existed, that individuals might have been involved in representing PATCO and that was put in their files?

Mr. Shewfelt. Well, when I personally reviewed files from time to time, there were all kinds of records that related to the individual. Whether they were used in making the decision or not, I can't say.

Mr. Molinari. Now, you've heard what I think is some rather surprising testimony here that no direct proof that somebody's annual leave had been cancelled, in fact, the only proof that we see here is that people attempted to reach the controller who was on annual leave and didn't reach him. And the man received a notice of dismissal. And to Mr. Gunter's credit, he admits today that that was a mistake on their part and it shouldn't have happened.

What concerns me very deeply is the fact that others may have had their cases prejudiced because, as Mr. Oberstar pointed out, they received a notice of dismissal, and the record is replete with people saying, "I heard on the radio or I read that I was dismissed," and then if they didn't show up to report for duty, that was held against them: that would appear in their oral-reply record and certainly appear before MSPB and maybe in the court itself.

I guess what I would ask at this point is, as a matter of conjecture, isn't it quite possible that some controllers may have lost their right to be reinstated because of the mistakes that you made, Mr. Gunter, and others like you?

Mr. GUNTER. Sir, to the best of my knowledge, I don't accept that, no, sir. I don't know of anything that could have happened like that. That's why a guy would not be back today if the judge—and many of them have been brought back, as you said, in reviewing the cases. I don't know of any data that is still keeping someone from getting their job back. I just don't know that.

Mr. OBERSTAR. What if Mr. Morse had thrown in the towel at that point and said, "That's it. I give up," and had not pursued his own case with a lawyer for 15 months. What would have happened to him?

Mr. GUNTER. I don't know, sir. I do know that———

Mr. OBERSTAR. Well, maybe I should just suggest to you that on the basis of what happened in other cases, he wouldn't be working today. He had to fight to get himself back into the system. He had to hire a lawyer, go to a lot of expense.

Mr. MOLINARI. I will go one step further, Mr. Chairman. You have many cases with the exact set of circumstances, where some individuals got back, some got back with 100 percent back pay, some got back taking 75 percent of back pay, and some opted not to receive a settlement, took their chances, and lost their jobs completely. A total lack of consistency in the application of our laws. That has to disturb anybody that sits up here as a Member of Congress.

Would you put the new log on, graphic 5?

[Pause.]

Mr. MOLINARI. Now, Mr. Gunter, could you tell me why, how, and when this action was taken place? The action I am referring to is the strike-out and change-over.

Mr. GUNTER. You are talking about Mr. Morse's name being there?

Mr. MOLINARI. Correct. I am talking about Mr. Morse, yes, sir.

Mr. GUNTER. No, sir, I can't.

Mr. MOLINARI. Now, Mr. Erickson, let me turn to you. It seems likely from your earlier testimony that you were the last person to handle documents before Mr. Gunter made his final decision. Did you make these changes?

Mr. ERICKSON. No, sir, I did not.

Mr. MOLINARI. Do you recognize the signature at all? The handwriting, does it look familiar to you?

Mr. ERICKSON. No, sir, I don't.

Mr. MOLINARI. Mr. Miller, can you help us? Do you recognize the handwriting?

Mr. MILLER. No, sir, I do not recognize it.

Mr. MOLINARI. Then, can any of you tell the subcommittee how, despite the absence of credible evidence and despite the clear statement by the oral reply official regarding the lack of evidence, why Mr. Morse was fired?

[No response.]

Mr. MOLINARI. Anybody want to volunteer?

[No response.]

Mr. MOLINARI. Mr. Gunter, you addressed it before. Why don't you answer the question?

Mr. GUNTER. I—I will try. In looking at the notes here, it shows that the note says, "Returned on Thursday 8/6." He signed for his proposed removal letter on 8/11, and of course, according to this—I would have to look it up—but his annual leave I don't believe was up at that time.

My thought on it is that if I had received a proposed removal letter on the 11th, I would have been in touch with the facility immediately, talking to myself or someone, stating, "Why this?"

So in trying to answer without taking the time to dig further, I think that probably played a part in my decision there.

Mr. MOLINARI. But you do admit flat out it was a mistake; am I correct? Isn't that what you said before?

Mr. GUNTER. Yes, sir. It was reviewed and, in other people's judgment, I made an error there.

Mr. MOLINARI. Thank you, Mr. Chairman. I have no further questions at this point.

Mr. OBERSTAR. As a follow-up to the point Mr. Molinari was making just a moment ago, you said earlier that the person would have had to go through the oral hearing. Now you said, "Well, if I had gotten a letter of that kind, a proposed removal notice, I would call up the Center." So if we put the two responses together, the controller would have called the Center and been told, "Well, you go through the oral hearing." He sure would not have been let back into the facility, if I put those two statements back together of yours.

Mr. GUNTER. Yes, sir, your statement is right. I did say that. My note here says that he did not contact the facility before his annual or after his annual. At no time did he get in touch with us. That would have played, in my mind, a big part of his sincerity that he did want to come back to work and that he was not on strike and that he thought he was on annual leave, approved annual.

Mr. OBERSTAR. He thought he was on approved annual leave, and apparently, then, he was fired for not calling the Center.

Mr. GUNTER. That played a part in it, yes, sir.

Mr. OBERSTAR. Played a part in it.

The gentleman from Pennsylvania Mr. Clinger?

Mr. CLINGER. Thank you, Mr. Chairman.

I would shift to another subject matter here. Mr. Miller, it's our understanding, the subcommittee's understanding, that after the final removal letters were sent to the fired controllers, the Chicago Center began to compile adverse action files, which are required under the procedures, and required them to be sent to the Great Lakes Regional office for review and certification prior to their being forwarded to the Merit Systems Protection Board.

What was your role in this process of compiling and forwarding the adverse action files, if any?

Mr. MILLER. I was reviewing the files to make sure they were complete with the list of items that we received from the region that were to be included in the files. If they were not complete, I was having secretaries get the appropriate documents or Xerox the appropriate documents to be included in the files.

Mr. CLINGER. And that process was going on in the war room?

Mr. MILLER. Yes. That was going on continuously.

Mr. CLINGER. And what would have been the routine contents of the adverse action file? What was included routinely in an adverse action file?

Mr. MILLER. All of the data and information that had been used from the time of the oral hearings and statements that were issued and all of the documents, the watch schedules through the date of separation from the beginning of the strike through the date of separation, the sign-in logs that were applicable to the individual, and the T&A's that had been completed at the time. If it was sent about the time of his removal, we may have to send additional T&A's up.

Mr. CLINGER. And then after you had compiled the file, it was sent to the Great Lakes Regional Office?

Mr. MILLER. We put them in boxes, in white file boxes in the war room, and they were delivered to the regional office or one of the people going to the region would takes them up.

Mr. CLINGER. Mr. Gunter, did you play any role in this collection of data for the adverse action files?

Mr. GUNTER. No, sir, none to my recollection.

Mr. CLINGER. Mr. Shewfelt, did your office provide any guidance—I think you've indicated the answer to this in your testimony—in preparation of the adverse-action files to the Chicago Center?

Mr. SHEWFELT. Yes, sir, we sent out a regional notice, written notice to all the facilities that outlined the types of materials that should be included.

Mr. CLINGER. This notification went to all of the offices which you were servicing at the time?

Mr. SHEWFELT. Yes.

Mr. CLINGER. Who provided that guidance? Was it generated in your office?

Mr. SHEWFELT. Yes, sir, it was.

Mr. CLINGER. Was it in the form of a written communication to the Chicago Center, or oral communication?

Mr. SHEWFELT. Yes, sir. It was a regional notice, called a RENOT.

Mr. CLINGER. Okay. Did you at any time ever meet with the Great Lakes Regional Office personnel in 1981, including during the time period after the adverse action files were sent to MSPB, for the purpose of discussing individual controllers' cases?

Mr. SHEWFELT. Yes, sir, I did.

Mr. CLINGER. Can you tell us who you met with, how many occasions, and what was the purport of the discussions?

Mr. SHEWFELT. I met with the Regional Counsel and the Air Traffic Division Manager, and we discussed cases such as Mr. Morse's where there appeared to be an error, and made recommendations.

Mr. CLINGER. Made recommendations. How many of these cases do you recall discussing?

Mr. SHEWFELT. Across the Region there might have been 40 or 50. I'm not quite——

Mr. CLINGER. 40 or 50?

Mr. SHEWFELT. Right.

Mr. CLINGER. Now, these were discussions that you had with personnel in the Great Lakes Regional Office.

Mr. SHEWFELT. Yes, sir.

Mr. **Clinger**. Did you have any discussions, similar discussions, with personnel at the Chicago Center with regard to individual controller cases?

Mr. **Shewfelt**. Before they were removed?

Mr. **Clinger**. During that period.

Mr. **Shewfelt**. We didn't discuss the cases before the decisions were made by the facility manager, by Mr. Gunter. We did discuss them with whichever facility manager was involved at the time when we were reviewing them.

Mr. **Clinger**. Prior to going to the MSPB?

Mr. **Shewfelt**. Well, in those cases that were where we settled the case; then we brought the person back to work. And even after the case was at the MSPB, some cases were settled.

Mr. **Clinger**. Mr. Miller, when were the adverse action files compiled at the Chicago Center? When were those adverse action files sent forward to the Regional office, the Great Lakes Regional Office?

Mr. **Miller**. They were sent at various times from the end of August through, I believe, the middle of October. I am not sure of the specific dates, sir.

Mr. **Clinger**. We are going to show you a series of papers identified in the lower right-hand corner as "Request A." [Exhibit 11.]

[Pause.]

Mr. **Clinger**. The question is does the document look familiar to you?

Mr. **Miller**. Yes, sir.

Mr. **Clinger**. What is this document? What does it represent?

Mr. **Miller**. It was a tracking document to keep track of what files had been sent and when we sent them.

Mr. **Clinger**. So there were a series of this kind of document?

Mr. **Miller**. Yes, sir.

Mr. **Clinger**. And then were the files, the adverse action files sent—I think you have indicated they were sent—to the Regional office in boxes?

Mr. **Miller**. Yes, sir.

Mr. **Clinger**. The last of the papers in the package identified as Request A has a date of October 1, 1981, apparently signifying that that was the last date on which completed files were taken from the Chicago Center to the Regional office. Is that correct?

Mr. **Miller**. No, I—the completed—the files, yes. I believe we did have some amended T&As that we did send up after the files had all been sent.

Mr. **Clinger**. But the files in the boxes, the final delivery date would have been October 1?

Mr. **Miller**. I believe so, yes, sir.

Mr. **Clinger**. Mr. Shewfelt, I believe you were responsible then for the documents after they had been shipped to the Regional office. Were they delivered to you?

Mr. **Shewfelt**. To the personnel in my office.

Mr. **Clinger**. Okay. And then did you direct the Regional personnel what was to be done with the adverse action files after they were received in the Great Lakes Regional Office?

Mr. **Shewfelt**. Yes, sir, I did.

Mr. CLINGER. And were the files from—let me back up a minute. I assume you were receiving similar files from all over your area. Right? Not just from the Chicago Center?

Mr. SHEWFELT. From all the facilities, approximately 2,700 such files.

Mr. CLINGER. 2,700 such files? How many files, if you recall, how many files did you receive from Chicago Center?

Mr. SHEWFELT. Well, there was earlier testimony that there were approximately 450. I don't know the exact number myself.

Mr. CLINGER. So you were receiving these files from all over the region. Were the Chicago Center files kept in one place? Were they separate? Did you deal with them as a separate entity, or were they all grouped together with all the other files from other centers?

Mr. SHEWFELT. I don't remember specifically, but I believe that the files, if they were received in a box, would have been stored in that box, and when our processing involved them, then they would have been removed from those boxes and then returned to them.

Mr. CLINGER. Was there limited access to these files, were they under lock and key, or were they available for anybody to access?

Mr. SHEWFELT. Well, there were a large number of people that were working under my direction at that time, but the office was in our personnel division, which was locked when people weren't present.

Mr. CLINGER. Right. But the files themselves were not in separate locked files or anything like that?

Mr. SHEWFELT. No, sir.

Mr. CLINGER. Then, after you received them, did personnel from your office systematically review those adverse action files?

Mr. SHEWFELT. Yes, sir.

Mr. CLINGER. Can you sort of relate briefly what the nature of that review was, what was the process there?

Mr. SHEWFELT. The individuals that were reviewing the files were doing it to ensure that there was a copy of the adverse action notices, the time-and-attendance records, including inserting into it the appointment affidavit and the Standard Form 50 used for the personnel action, the official notice of personnel action.

Mr. CLINGER. So you were trying to determine if the files were complete and——

Mr. SHEWFELT. That's correct.

Mr. CLINGER [continuing]. If there was a paper record to support the adverse action?

Mr. SHEWFELT. Yes, sir.

Mr. CLINGER. And if you noticed errors or inconsistencies or the dates or names did not correspond, did you then notify the Chicago Center of any errors or inconsistencies?

Mr. SHEWFELT. The people in the office did, sir. I didn't do it personally.

Mr. CLINGER. Do you know who would have been notified, one person or——

Mr. SHEWFELT. No, sir, I don't know specifically. Typically, it's the facility manager, but at a large facility it might have been other people. At a large facility such as the center it might have been somebody else, but at smaller locations it was the facility manager.

Mr. CLINGER. How many people were under your jurisdiction during this exercise?

Mr. SHEWFELT. I had four regularly assigned specialists and then air traffic, supervisory air traffic specialists from field facilities that were detailed to my office, other personnel specialists, clerical people. The number was probably more than 20.

Mr. CLINGER. How many would actually have been involved in this review of the adverse action files?

Mr. SHEWFELT. Well, the labor relations specialists that were regularly assigned to the branch.

Mr. CLINGER. Four?

Mr. SHEWFELT. Four of those. The supervisory air traffic controllers, I am not sure; there might have been ten of those. I just don't remember the number exactly. And other personnel specialists that would have been competent to review the materials. So in total it could have been 15 people reviewing those files.

Mr. CLINGER. Did you personally review any of these files?

Mr. SHEWFELT. Yes, sir, I did. Not specifically at that time, but later on when the files were identified with where there were problems.

Mr. CLINGER. Mr. Miller, were you ever notified by the Great Lakes Regional office of mistakes or inconsistencies among the documents contained in the adverse action files?

Mr. MILLER. Yes, sir.

Mr. CLINGER. Were you ever the recipient of that kind of a notification?

Mr. MILLER. Yes, sir.

Mr. CLINGER. And were there other personnel who served in the war room who would have received that kind of notification?

Mr. MILLER. That I am aware of, a couple of requests came from the personnel office also, other than the phone calls that I had received, to provide additional information or provide information that they could not locate.

Mr. CLINGER. The contacts would come to you from the personnel office of the Regional office?

Mr. MILLER. Yes. I received some contacts direct from the Regional office, Labor Relations branch, and our Personnel office had received a couple calls also for additional information.

Mr. CLINGER. When you were informed of the mistakes, inconsistencies within the records, what did the personnel at the Chicago Center do to correct the errors?

Mr. MILLER. Well, various types, we had a couple of requests for additional copies of the letters. We evidently did not get the letter, the proposal or the letter of dismissal included. In a couple of cases, watch schedules could not be found, and we would Xerox these from the original file and put them in an envelope and address them to attention of whatever specialist had called.

Mr. CLINGER. Had called?

Mr. MILLER. Yes.

Mr. CLINGER. So it was going to different specialists; different responses were going to different specialists?

Mr. MILLER. Yes, sir.

Mr. Clinger. Mr. Miller, do you recall any meetings between yourself or others at the Chicago Center with personnel from the Great Lakes Regional Office to discuss individual controller cases?

Mr. Miller. To discuss controller cases?

Mr. Clinger. Right. Were there any discussions or meetings between Chicago Center personnel and Great Lakes Region personnel to discuss individual cases, individual files?

Mr. Miller. Not prior to the MSPB hearings, that I can recall.

Mr. Clinger. There would have been telephone conversations?

Mr. Miller. Yes.

Mr. Clinger. And they would advise you of errors?

Mr. Miller. Omissions.

Mr. Clinger. Omissions and that sort of thing.

Mr. Miller. Yes, sir.

Mr. Clinger. But no meetings where you sat down to discuss this?

Mr. Miller. No, sir.

Mr. Clinger. Mr. Gunter, were you ever involved in any meetings to discuss individual controller cases with personnel from the Great Lakes Regional office?

Mr. Gunter. No, sir, I do not recollect that. Normally, my phone calls would come from the air traffic division.

Mr. Clinger. Thank you.

I think my time has expired, Mr. Chairman.

Mr. Oberstar. Mr. Miller, following up briefly on Mr. Clinger's questions, did you meet with Mr. Shewfelt, for example, to review the merits of individual cases?

Mr. Miller. Prior to the MSPB hearings, no, sir.

Mr. Oberstar. Not prior to the hearing?

Mr. Miller. No, sir.

Mr. Oberstar. At any time in 1981, after or in preparation for the MSPB hearings?

Mr. Miller. No, sir.

Mr. Oberstar. Mr. Gunter, did you ever meet with Mr. Miller or Mr. Shewfelt to review the merits of individual cases?

Mr. Gunter. I met with the attorneys who were going to handle the cases going into the MSPB. That's my first recollection.

Mr. Oberstar. That was 1982; is that right?

Mr. Gunter. Yes, sir.

Mr. Oberstar. All right.

Mr. Miller, were corrected documents which were prepared in the war room transported to the Regional office for substitution in the adverse action files?

Mr. Miller. Were they transported to be sent?

Mr. Oberstar. Were they transported there, sent to the——

Mr. Miller. Yes, sir.

Mr. Oberstar. They were. How many substitute documents were prepared and transmitted, roughly? I recognize you can't give a precise count; there were thousands.

Mr. Miller. After the completion of the files, probably 40 or 50 is a guess. It could have been plus or minus 20. I'm not sure.

Mr. Oberstar. Files. Individual files.

Mr. Miller. Oh, no, not files. I am talking about documents, sir.

Mr. Oberstar. 20 or 40 documents?

Mr. Miller. Yes. The majority of them being time-and-attendance reports that were being completed through the separation date, which is a point in time after the final removal letter was issued.

Mr. Oberstar. Did you bring any of those documents yourself?

Mr. Miller. I did bring some amended T&As to the Regional office, yes.

Mr. Oberstar. Who else would have done so?

Mr. Miller. Mr. Cullerton and Mr. Peterson both carried some documents up. Mr. Peterson lived near the Regional office, and he had delivered some envelopes.

Mr. Oberstar. Can you recall any of the Regional office personnel who may have helped you in the transfer of these new documents into the adverse action files?

Mr. Miller. The only ones I can recall, I did take three time-and-attendance reports up and had one of the women in the office show me where the file numbers were, and I inserted the three amended T&As into the files myself. I did not get involved in any other amending of the files in the Regional office, to the best of my knowledge.

Mr. Oberstar. Mr. Shewfelt, were you aware of substitution of documents in the Chicago Center adverse action files?

Mr. Shewfelt. No, sir, I was not.

Mr. Oberstar. Did you talk with members of your staff or any other person at Chicago Center about the need for substituting such files?

Mr. Shewfelt. Well, yes, sir. We were reviewing the files, and if there were documents that needed to be incorporated into those files, then they would have called and asked for them to be sent over, and from time to time they were brought over in person, according to the testimony, and they would have been incorporated that way.

Mr. Oberstar. In order to understand this process better, let me show you a copy of a November 16, 1981, letter to Mr. R.J. Payne, which was used to transmit the adverse action files to the MSPB. [Exhibit 12.]

[Pause.]

Mr. Oberstar. Paragraph 8 says, "Evidence relied upon is enclosed as Tab 5," et cetera. The conclusion says, "I certify that the above information is true and correct, and copies of all materials are true copies." That is your signature there?

Mr. Shewfelt. Yes, sir, it is.

Mr. Oberstar. It's not a stamp?

Mr. Shewfelt. No, sir. I signed a copy of this.

Mr. Oberstar. How many such letters can you recall signing?

Mr. Shewfelt. I believe I signed one. There may have been an additional identical copy of this. I signed this and then the names were filled in. These were duplicated, and the names were filled in.

Mr. Oberstar. So you were not actually certifying each one; you just sort of signed the blank check and the name was filled in at the top. Is that correct?

Mr. Shewfelt. The name was filled in at the top, yes, sir.

Mr. Oberstar. Who would have filled that name in?

Mr. **Shewfelt**. A number of the people working in the office at the time, clerical people and others.

Mr. **Oberstar**. In testimony before the MSPB, Mr. Shewfelt, at the point at which it was alleged that massive substitution of documents in the adverse action files had taken place, you said that had you known of such substitution, you never would have certified the content of those files. Is that an accurate statement of your testimony?

Mr. **Shewfelt**. It sounds correct, sir.

Mr. **Oberstar**. In view of what you have seen and what you have seen today, would that still be your statement?

Mr. **Shewfelt**. Yes, sir.

Mr. **Oberstar**. Both under oath before the MSPB and during interviews with our subcommittee staff, you have repeatedly and consistently denied knowledge of the substitutions made. You have also denied ever discussing the subject with your staff, even after repeated questioning. Is that still your position today?

Mr. **Shewfelt**. I think we need to clarify the question of information to my staff. I was asking them to review the files to make sure that the material necessary to be produced, according to the order of the MSPB, was included in the file and if it wasn't, to call the facility and ask for that material to be included.

Mr. **Oberstar**. Well, if you had taken the position that said that if you had known of substitutions, you never would have certified the contents of those files. When you think back on it, would you have given blank check—just signed your name—to a whole series of these letters with names to be filled in, and not have actually reviewed all those files prior to the name being filled in?

Mr. **Shewfelt**. Well, we established the process in the office there for review of the files. It certainly wasn't possible for one person to review all of those files, and I relied upon the people that were familiar with the process to review the files and then I permitted my letter to be attached to the files when they were sent to the MSPB.

Mr. **Oberstar**. The letter, to be accurate, really should read something else, shouldn't it: "Members of my staff have told me"—or named the person—that this information is true and correct, because you, as you have just said, physically could not possibly have reviewed all those files? So to have an accurate record, it really should reflect something other than what is said here. It is just that, in short, what is emerging is this pattern of just sort of wholesale handling of these cases rather than the individual attention that has been alleged on the part of FAA paid to them.

Do you believe many documents were substituted at the regional level?

Mr. **Shewfelt**. Mr. Miller's testimony was that he substituted 40 or 50. There may have been others that——

Mr. **Oberstar**. 40 or 50?

Mr. **Shewfelt**. Documents.

Mr. **Oberstar**. Documents.

Mr. **Shewfelt**. There may have been others that were sent in through the mail from outlying facilities.

Mr. **Oberstar**. And those 40 or 50 documents, what size container would have held them? A little accordion file or a little envelope or how substantial?

Mr. **Shewfelt**. Depending whether they came in one at a time or in mass.

Mr. **Oberstar**. The file that was sent to Mr. Gunter a while ago, is that the kind of thing we're talking about?

Mr. **Shewfelt**. I guess I am not——

Mr. **Oberstar**. Yes.

Mr. **Miller**. Mr. Chairman.

Mr. **Oberstar**. Mr. Miller, perhaps you would like to clarify this?

Mr. **Miller**. Yes. In sending them up, they were sent in envelopes, in regular business envelopes, and probably some of the envelopes contained as many as six or seven documents they had requested. So I didn't mean to mislead you. These were not all substitutions; some of them were omissions from the files, so that is not being a misleading factor.

They would call and say that they could not locate a letter of proposal in the file, and I would Xerox the letter from the original file and put it in an envelope. If there was more than one request, I am strictly guessing at the 40 or 50, but probably they would be held in as many envelopes as would occupy two inches of space in business-size envelopes.

Mr. **Oberstar**. That would be the total amount.

Now, Mr. Miller and Mr. Shewfelt, let me send over to you a document entitled "Packages to regional office." [Exhibit 13.]

[Pause.]

Mr. **Oberstar**. Please take a close look at that document. It doesn't list a few envelopes, but rather lists 14 columns of information which represent the contents of 14 boxes. Each of those columns has the names of 25 to 41 controllers at Chicago Center who were fired, and a date in parentheses at the bottom, the earliest of which is October 16, 1981, and the latest is November 5, 1981.

Now, has either one of you ever seen this list before? Do you have any idea of what that list represents? Is it not possible that this document is the documentation of the changes made in the adverse action files?

Mr. **Miller**. No, sir. I believe these were the documents—there was two requests that had come down and the initial request that was received from the Region by the facility was to send five copies, and we started by sending multiple copies. And then later the determination was made by Region they could be more effectively copied in the Region because we did not have the wherewithal to complete the documentation for each file.

But these are the boxes that were sent to the Region of the actual original files.

Mr. **Oberstar**. Well, were those boxes sent over a period of time that I have cited, between October 16 and November 5? Are you aware of that?

Mr. **Miller**. The ones that you are talking here, the originals?

Mr. **Oberstar**. Right.

Mr. **Miller**. Yes.

Mr. **Oberstar**. In that document. Would those have contained documents that included substitutions of records as well as additional information, as you said a moment ago that there was additional information requested?

Mr. **Miller**. No. The additional information requested as sent in envelopes.

Mr. **Oberstar**. That was sent in envelopes.

Mr. **Miller**. Yes.

Mr. **Oberstar**. So this was not——

Mr. **Miller**. No, these were file boxes that were sent up to the regional office.

Mr. **Oberstar**. Are those file boxes of documents amassed in the war room?

Mr. **Miller**. Yes. Yes, they were, sir.

Mr. **Oberstar**. Mr. Shewfelt, how could you not have known that there were 14 boxes of documents sent up to your operation?

Mr. **Shewfelt**. Sir, I—well, I didn't know the number of boxes of documents from the Chicago Center. But we had documents coming in from 75 facilities, files like this.

Mr. **Oberstar**. There are 431 individual packages. Could you characterize, Mr. Miller, what would have been in each of those generally? Would they have been generally the same information? Could you characterize what information would have been in those packets in each of the boxes?

Mr. **Miller**. They were duplicates of the personnel files, such as you had just sent down here, that were prepared and sent up in a similar fashion to the——

Mr. **Oberstar**. Would that include amended T&As and sign-in logs and watch schedules?

Mr. **Miller**. Yes, sir.

Mr. **Oberstar**. Well, in reviewing a sampling of the MSPB files, the subcommittee—and we have carefully gone through these files—have located three files in which there are two complete sets of the records containing conflicting entries. How can you explain that?

Mr. **Miller**. Two complete——

Mr. **Oberstar**. Two complete sets of the same records, that include conflicting entries.

Mr. **Miller**. Are you talking about the sign-in logs were different, sir? I don't believe there were any that the schedules were different. The sign-in logs and the T&As may have been different, yes, because they were amended.

Mr. **Oberstar**. That's correct. So that would be the reason: because of the changes that were subsequently made.

Is it possible that someone putting new records in forgot to take out the old records? Or how would this have occurred that we have these conflicting records? Or was it intentional? Was it: We know there's one set in there and we've changed it and put in a subsequent set of T&A and sign-in logs?

Mr. **Miller**. Okay. The duplicated documents, the two separate sendings both contained the same items. In other words, the packet, for instance, for Mr. Anderson, D. Anderson, was—well, here, D.C. Anderson was sent in the initial transmission of packets this day, and the duplicated ones for MSPB were sent in box 1 on 10/16/81. And, yes, some of the documents that were contained in Mr. Anderson's file and the boxes that were sent through the duplication may have amendments on that were not on the initial files; that's correct.

Mr. **Oberstar**. You sure had a lot of documents you had to work with there, didn't you?

Mr. **Miller**. Yes, sir.

Mr. **Clinger**. Would the gentleman yield for just a question?

Mr. **Oberstar**. Yes.

Mr. **Clinger**. I am a little unclear as to what was contained in the boxes listed on this Exhibit 13. I think, Mr. Miller, you indicated these were the original—or these were adverse action files?

Mr. **Miller**. Duplicates of the adverse action files, yes, sir.

Mr. **Clinger**. Because you had previously sent—had you not previously sent the adverse action files to the Great Lakes Regional Office before these submissions were made?

Mr. **Miller**. We did not send the originals, no, sir. If I said that, I stand corrected.

Mr. **Clinger**. Okay.

Mr. **Miller**. We sent duplicates that were made to—the initial packets were sent starting on September 14, and through October 1, and then the order for the—from the MSPB came down, and they wanted—I believe the initial order requested that we make five copies of each file, and we started trying to duplicate the files for the MSPB hearings. From the time we sent the original packets, there was a request, evidently, from MSPB that came down for five duplicates of each packet. And these were then started and sent, and we ended up sending, I believe, 14 boxes.

Mr. **Clinger**. Well, then what is the difference between the listing under Exhibit 11, which is completed packets delivered to Regional office September 14 and September 15 and so forth; then we come over to this last listing which is under "Packages sent to Regional office, box 1, 2, 3, 4," et cetera. What is the difference between those submissions, original submissions, and these later submissions?

Mr. **Miller**. I will have to yield to Mr. Shewfelt, but I believe there was a request from MSPB for some multiple number of packets, and I—five seems to stick in my mind as the number of packets on each case that was to be sent.

Mr. **Clinger**. So are you saying that the original submission then would have been one copy of the file; you then say that you would have received a request after the submission of the original file requesting five duplicate copies of each one of those?

Mr. **Miller**. The original duplicated file.

Mr. **Clinger**. Right.

Mr. **Miller**. Yes. Yes, sir.

Mr. **Clinger**. Is that your understanding, Mr. Shewfelt?

Mr. **Shewfelt**. Sir, I don't really remember that particular circumstance. I am not familiar with these documents. That makes sense to me, though, that that would have been the case. And I know that there were changes in the requirements that were ordered by the Board and that those changes impacted on what we asked the facility to do.

Mr. **Clinger**. And would the copies that then you sent subsequent to being informed they needed five copies of each one of them be presumably identical to the original copy?

Mr. **Miller**. Yes, sir. They were Xeroxed from the files. The individual files were taken out and five duplicate copies made of the original file, and the same was done for the first packet for the single packets.

Mr. **Clinger**. Thank you.

I'm sorry, Mr. Chairman.

Mr. **Oberstar**. That's just fine.

Following on, Mr. Shewfelt, isn't this sort of the scenario, the way this worked, that you received one shipment of documents; your office reviewed them; got back to Chicago Center and said, "This is inadequate. We need more information." They sent up a second set of documents in boxes. So, in effect, that's how you got two sets of records which contain conflicting information?

Mr. **Shewfelt**. No, sir, that's not accurate.

Mr. **Oberstar**. That's not accurate? When you got the first set of records and reviewed it, what did you do?

Mr. **Shewfelt**. We prepared to transmit them to the MSPB.

Mr. **Oberstar**. You didn't get back to the Chicago Center and say, "This information isn't adequate"?

Mr. **Shewfelt**. From time to time on individual cases, possibly; but not wholesale.

Mr. **Oberstar**. So it's just that from time to time from one case to the next that further information was requested, sent up then by Mr. Miller and whomever at his direction?

Mr. **Shewfelt**. Yes, sir.

Mr. **Oberstar**. Did you meet with Mr. Gunter in this time frame, October-November, with Mr. Gunter and Mr. Miller to discuss the adequacy of the FAA case against the Chicago Center controllers?

Mr. **Shewfelt**. No, sir.

Mr. **Oberstar**. Did you discuss with them by phone at any time the adequacy of the cases?

Mr. **Shewfelt**. I don't remember any phone calls with them at all.

Mr. **Oberstar**. You do not. All right.

[Pause.]

Mr. **Oberstar**. Well, what we have here are files relating to various controllers sent up at differing times and differing information over a period of several weeks. All these boxes represent different shipment times; they add up to the number that I have already cited.

What we find is that these are amended T&As and amended work schedules and amended sign-in logs. There is a great deal of changing that was going on. Does that accurately reflect what was happening in the Center at that period of time?

Mr. **Miller**. You said all changed items. I believe better than 99 percent of the files would be identical from the first files and the second files that were sent up. They were duplicates made for MSPB purposes. The differences would be if some of the T&As had been completed after September 14 through the time the individuals entered a no-pay status, they may have been added to the file and the second file that went up. The primary files should be identical from the first group and the second group that went up.

And in clarification, when I said 40 or 50 documents were sent up at the request of the Region, that were missing, this would be

40 or 50 pages or possibly two pages if it was a letter of proposal and a delivery, a postal delivery ticket on the top; so that would be two pages. And there were 40 or 50 of these items which, as I said, occupied a very small space when placed in envelopes.

Mr. **Oberstar**. Yes, Mr. Clinger?

Mr. **Clinger**. Just following up, Mr. Chairman.

In the copies of records sent to Regional office, just as an example, box 12, which was sent 11/5, November 5, is a box for C. Lawson. The time-and-attendance record which MSPB got was dated 11/4. So that could not have been in the original submission that came up with the original file. I gather we have a——

Mr. **Miller**. I am sorry, sir, what box number was that?

Mr. **Clinger**. This is box number 12.

Mr. **Miller**. That was sent on 11/5, yes, sir.

Mr. **Clinger**. 11/5. And included in it, apparently, was a time-and-attendance report for Mr. Lawson dated 11/4.

Mr. **Miller**. Yes, sir.

Mr. **Clinger**. So that could not have been copied from—you're stating that 99 percent of the files that came up over this period were identical copies of the original submissions that had been made back in September. All I am saying is that there was material in those later copies that was not included in the original submission.

Mr. **Miller**. That's correct, sir. The T&As that were completed after the original packets' time-and-attendance reports were included in the second packet. That is correct.

Mr. **Clinger**. So that was a major difference in many cases? They were a lot of changes in the T&A records from the original submission to the copies, the five copies that were sent later?

Mr. **Miller**. No, sir. Maybe I am misunderstanding what you're saying. They were not changes to the T&As; they were completed T&As. The separation date for Mr. Lawson, for instance, may have been, and probably was, 11/4; and on 11/5 we completed his file so that the T&As and everything were complete, and sent the documents up with complete T&As. The first one did not contain the latter T&As.

Mr. **Clinger**. Did it contain any T&As?

Mr. **Miller**. It may have contained the ones that were completed on whatever date his package was sent to the Region, but he still had additional T&As that were contained in the second one up until the time he went to a no-pay status.

Mr. **Clinger**. On the T&A for Mr. Lawson, at the bottom it's dated November 4, and under the "Remarks" it says "amended to reflect the way the original T&A should have been submitted." In other words, presumably there was an original T&A in the first submission, and this was being substituted to reflect the way the original T&A should have appeared.

Mr. **Miller**. I don't believe so. The comment on the bottom of the T&A there is, yes, it is an amendment to the time-and-attendance record, but that was not included in the first one. That was an amendment that was completed by the time-and-attendance clerk to reflect either the last day of pay—or of LWOP status prior to going into a no-pay status. I'm not sure what the amendment would be, but it should be also depicted on the bottom of the time-and-attendance report.

Mr. CLINGER. Thank you.

Mr. OBERSTAR. I think we will revisit this issue in a little bit because there are some inconsistencies that we have difficulty grasping, but we want to proceed to another matter.

Mr. Molinari is recognized.

Mr. MOLINARI. Mr. Miller, Mr. Gunter, Mr. Shewfelt, it's my understanding that in the earlier testimony today that all three of you denied ever meeting in 1981 to discuss the cases of the Chicago Center controllers. I would like, for the record, to verify that statement. Is that a correct statement, Mr. Gunter?

Mr. GUNTER. Yes. I have no recollection of meeting with Mr. Shewfelt to discuss any of the cases.

Mr. MOLINARI. Mr. Miller?

Mr. MILLER. I do not recall meeting with him, no, sir.

Mr. MOLINARI. Mr. Shewfelt?

Mr. SHEWFELT. No, sir, I didn't meet with them.

Mr. MOLINARI. All right. Would the staff please give what we call Exhibit 14 to the three gentlemen that just spoke? [Exhibit 14.]

[Pause.]

Mr. MOLINARI. I would like to read to you what I see. Mid-page is a memo dated December 15, 1981. It states as follows: "On Monday, December 7, 1981, at 9:00 a.m., Messrs. Wes Walker, Dick Shewfelt, George Gunter, and Robert Miller met"—"meet" it says, but I think it meant "met"—"in the Regional office to discuss the attached list of Chicago Center personnel who had leave involved the first week of the strike."

Then the second and last paragraph was: "Of the list of 44 names, the Regional office agreed that 31 of the cases were adequate as submitted, three were marginal, and 10 needed additional data to be relatively strong cases."

The first question: does that refresh your recollection as to a meeting?

Mr. GUNTER. No, sir. But I accept it. I don't recall this meeting, but I accept the document and stand corrected.

Mr. MOLINARI. Mr. Miller?

Mr. MILLER. I—I do not recall the meeting, no.

Mr. MOLINARI. Mr. Shewfelt?

Mr. SHEWFELT. No, sir, I don't remember the meeting.

Mr. MOLINARI. Does the memorandum and accompanying documents look familiar to you gentlemen?

Mr. GUNTER. I honestly don't—this doesn't stir my memory at all about that.

Mr. MOLINARI. Mr. Miller?

Mr. MILLER. I do recognize the list, yes, of people that were on leave.

Mr. MOLINARI. You recognize it as a list that obviously had information referring to controllers and tied in to that accompanying memo, "31 cases adequate as submitted," if you look at the first page, if you add the okay's in the column of the 44 listed, there are 31 okay's. There are three that are marginal, and there are 10 that needed additional data, and they are shown by the dash line following the file number.

Now, again, this would seem to be an extremely important memorandum and data. You are preparing cases for submission, and the memo that I read, which you don't recognize, indicates that these were being furnished in preparation of cases that were being sent to the Regional office. And in the case of 13 there was an indication that there was additional evidence needed to justify, I assume, dismissal.

Now, again, I would ask the question, Mr. Shewfelt, does this ring a bell with you?

Mr. **Shewfelt**. No, sir, it doesn't.

Mr. **Molinari**. It doesn't.

Mr. **Shewfelt**. But I would like to point out that we submitted the files to MSPB in November.

Mr. **Molinari**. You testified? I am sorry, I missed that.

Mr. **Shewfelt**. I would like to point out that we submitted the files to the MSPB in November.

Mr. **Molinari**. Yes. All right.

Mr. **Shewfelt**. This meeting allegedly occurred in December. I don't remember it but——

Mr. **Molinari**. Mr. Miller?

Mr. **Miller**. No, sir, I do not recall the meeting.

Mr. **Molinari**. Now, let's turn then to Exhibit 15.

Staff, would you please?

[Pause.]

Mr. **Molinari**. It is included in the file of Jerome Iwanski.

Would you please give it to Mr. Gunter. The file. We have it up here.

[Pause.]

Mr. **Molinari**. Mr. Gunter, take a few moments as you did before, if you would, to familiarize yourself with the contents of the file. What I am going to ask you is what you find in that file to justify firing Mr. Iwanski. So as you peruse it, you might look for those documents.

Mr. **Oberstar**. If the gentleman would yield.

While you are doing that, think through this question and I would like your response: can we assume that the three cases identified as marginal in the text of the memo are identified on the third page of the memo with the word "gray" beside their name? Three cases identified as marginal in the text of the memo, are they the ones identified on the third page with the word "gray"?

[Pause.]

Mr. **Oberstar**. Mr. Shewfelt?

Mr. **Shewfelt**. I am not familiar with this document, so I couldn't say, sir.

Mr. **Oberstar**. Could we assume that there is a correlation between those two?

Mr. **Gunter**. You are looking at Number 11?

Mr. **Oberstar**. Yes.

Mr. **Gunter**. I honestly have no idea what that means.

Mr. **Oberstar**. Well, what about those identified with the words "needing additional data," can we assume that those are identified on the third page with a plus? There are a number of pluses on that page. There is an exact number in each case, ten on the one page and ten on the other.

[Pause.]

Mr. GUNTER. My recollection, looking at the notes, is that it was my opinion that this gentleman had been contacted. A statement here that on August 1 they had called his home and talked to his wife; she said he was out. They left word for him to call the facility, which he never did.

On August 2, another person, a different one, said that he called this gentleman's house, talked to his wife, and told her to have him call on 8/3. This time she said he was gone fishing.

Also, another document by this team supervisor made the statement that, "Due to the discussion on a daily basis prior to August 2, 1981, in my mind Mr. Iwanski was aware that if a job action did occur, his annual leave was cancelled."

Mr. MOLINARI. What is the date of that memo that you are referring to?

Mr. GUNTER. This one doesn't seem to have a date on it, sir, the last one that I read.

Mr. MOLINARI. Who is the author of it?

Mr. GUNTER. Winslow, Wayne Winslow. The first one has an August 27th date. The second one had an August 28th date. The third one, there is no date on this one, but signed by Wayne Winslow.

My notes also show that I cannot find where he called the facility either before or after the strike started or even after his annual leave was over.

Mr. MOLINARI. Maybe I can help a bit here, Mr. Gunter, by reading your sworn testimony before the MSPB.

This was a question posed to you by Ms. Weikel Johnson. It says, "Mr. Gunter, I show you a copy of what was entered into Mr. Iwanski's file, the document from Mr. Wayne Winslow that was added to his file that was originally left out, and ask if you would carefully read the document." The record shows that at that point you read the document.

> *Question*: "All right?"
>
> Answer: "Yes."
>
> *Question*: "Now calling your attention to the final paragraph that Mr. Winslow wrote, did that paragraph have any bearing on your decision to terminate Mr. Iwanski?"
>
> Answer: "Yes."
>
> *Question*: "And what bearing did it have?"
>
> Answer: "That he knew that annual leave was cancelled if we had a strike or a job action."

So at that time, apparently, according to the sworn statement here of your testimony, you were relying on this undated memorandum of Mr. Winslow. Does that refresh your recollection?

Mr. GUNTER. I do not recall the testimony or the time there, no, sir.

Mr. MOLINARI. Mr. Gunter, I am not sure of your answer. Did you say you relied upon it, or you didn't rely upon it, or you don't remember?

Mr. GUNTER. I don't remember the testimony that you're talking about there, but I accept it, sir.

Mr. MOLINARI. Let me have a copy brought to you quickly, if I may.

[Pause.]

Mr. **Gunter**. Your question again, sir?

Mr. **Molinari**. The question is: Is that the prime reason why you dismissed Mr. Iwanski?

Mr. **Gunter**. That was part of it that I relied upon, yes.

Mr. **Molinari**. And there were other reasons as well?

Mr. **Gunter**. Well——

Mr. **Molinari**. Do you want to change the testimony that you gave that day?

Mr. **Gunter**. No, sir.

Mr. **Molinari**. Now, I understood, in reading that, that that was the reason why you based your decision on firing him.

Mr. **Gunter**. It says here, "Did that paragraph have any bearing on your decision?" Yes, it did.

Mr. **Molinari**. Okay. How much bearing?

Mr. **Gunter**. I honestly—I can't answer that at this point. I don't recall.

Mr. **Molinari**. All right. To get back to what we called Exhibit 14, I think it was, the three-page memorandum, is Iwanski, Mr. Gunter, one of the individuals identified on page 3 of that memorandum?

Mr. **Gunter**. Yes, sir.

Mr. **Molinari**. Is there a plus by his name?

Mr. **Gunter**. It looks it might be. I can't tell by my copy.

Mr. **Molinari**. Mr. Gunter, do you see anything in his file that was added as a result of that meeting?

Mr. **Gunter**. Would you say that again, sir?

Mr. **Molinari**. Do you see anything in his file that was added as a result of the meeting, the meeting held on December 7, 1981? I know you're not familiar with the memo; you testified that. What I am asking you now is not whether you're familiar with that memo, but whether anything was added after that alleged meeting.

Mr. **Gunter**. Sir, I honestly wouldn't know. I—I just—I don't remember the file or the gentleman that much.

Mr. **Molinari**. All right.

Would you hand Mr. Gunter Exhibit 16?

[Pause.]

Mr. **Molinari**. All right, Mr. Gunter, you see an envelope that was also found in the boxes of subpoenaed materials. Could you read for me what's written on the envelope on the left side?

Mr. **Gunter**. It says, "Ed notified 12/9/81, time 1400, received statement."

Mr. **Molinari**. Do you know who Ed is that they're referring to, any idea?

Mr. **Gunter**. I—it could possibly be Ed Froelich.

Mr. **Molinari**. What do you interpret that "received statement 12/9/81 at 1400" to mean?

Mr. **Gunter**. Well, undoubtedly, this Ed was notified on that date and received some kind of statement from him. I would assume that's what it means.

Mr. **Molinari**. Statement for Mr. Iwanski's file?

Mr. **Gunter**. I would assume so.

Mr. **Molinari**. In that Iwanski file that you looked at, do you find any documents dated December 9, 1981?

[Pause.]

Mr. GUNTER. Yes, sir. There's a document dated 12/9/81.

Mr. MOLINARI. Would you describe that document, please?

Mr. GUNTER. It has some notes on it. It looks like a summary of some dates and times.

Mr. OBERSTAR. Is Mr. Winslow's name on that document?

Mr. GUNTER. Yes, sir, to the right.

Mr. OBERSTAR. If the gentleman would yield a moment.

Mr. MOLINARI. I would be glad to yield.

Mr. OBERSTAR. What is the relationship of Froelich and Winslow, institutionally? Is Froelich——

Mr. GUNTER. Assuming that's who Ed is—I'm not saying for sure that's who that is—but assuming that it is, the best of my recollection, Ed Froelich was an area manager at that time, if I remember correctly then.

Mr. OBERSTAR. And Winslow?

Mr. GUNTER. Was a supervisor, team supervisor.

Mr. OBERSTAR. And would Froelich have been his boss?

Mr. GUNTER. Could have been, yes, sir.

Mr. OBERSTAR. Thank you.

Excuse me. Go ahead, Mr. Molinari.

Mr. MOLINARI. Now, Mr. Gunter, could you please read for us the memo from Mr. Winslow that is dated August 28, 1981?

[Pause.]

Mr. GUNTER. There's an August 28, 1981, memo for the record: "On Sunday, August 2, 1981, I worked a 12:00 shift. At approximately 1520 I attempted to call the following individuals with the following results: R. Becker, no answer; J. Hess, no answer; J. Iwanski, talked to his wife, told her to have him call in on 8/3/81, she said he was fishing and could not be reached."

Mr. MOLINARI. Okay. Then there are some more, I assume, underneath that, referring to Mr. Hehr and Mr. Rasmussen?

Mr. GUNTER. Yes, sir.

Mr. MOLINARI. Okay. So do you agree that the memo that you have just read of August 28 and the first two paragraphs of that undated memorandum from Mr. Winslow contain basically the same information as it relates to Mr. Iwanski?

Mr. GUNTER. I will have to get it out of the other file, sir.

[Pause.]

Mr. GUNTER. Yes, sir, I would agree with you, it's basically the same.

Mr. MOLINARI. But then let me ask you, why would Mr. Winslow write two memorandums with the same basic language at the same time?

Mr. GUNTER. It appears to me that this was—the one on the left, where he dated it August 28, he was keeping a record of the telephone calls that he was making on that particular day and shift to the different people. The second statement, where it deals strictly with one individual, I am assuming that we asked his area manager or someone went to this team super and asked him for a direct statement that deals with this one individual here.

Mr. MOLINARI. Mr. Erickson, do you ever recall seeing the memorandum that we have been discussing here?

Mr. ERICKSON. I haven't seen it, sir.

Mr. Molinari. Would you mind handing it down the table, please?

[Pause.]

Mr. Erickson. I don't specifically recall either one of these, Congressman, but it possibly is one that I would have gotten.

Mr. Molinari. Okay. Thank you.

Then, Mr. Gunter, the only difference between the two statements is the last paragraph in the undated memorandum, that, "Due to the discussions on a daily basis prior to August 2, 1981, in my mind, Mr. Iwanski was aware that if a job action did occur, his annual leave was cancelled." Is that fair?

Mr. Gunter. Yes, sir, I agree with you.

Mr. Molinari. Now, Exhibit 16, you are going to see a memorandum from Sy Kok about Bob Lambrecht. I believe they are both dated September 12—sorry, December 8. I am corrected on the date. Do you notice any similarities between those memos?

[Pause.]

Mr. Gunter. Yes, sir.

Mr. Molinari. Would you describe the similarity?

Mr. Gunter. Well, the similarity is each person was communicating the same message, and that is: if you're on annual leave when the strike hit, your annual leave is cancelled.

Mr. Oberstar. Would you read that last paragraph in the Kok memo? Read it out loud, please.

Mr. Gunter. "In my mind, he understood that if there were a job action/strike, his annual leave was cancelled."

Mr. Molinari. Now read, if you will, the memo from Billy Mingus with regard to Mr. Hinshaw, and read the same last paragraph.

Mr. Gunter. "There is no doubt in my mind that Mr. Hinshaw was aware that if a job action occurred, his annual leave would be cancelled and that he would be required to return to work."

Mr. Molinari. Now, I don't want to prolong the agony here, but let me say this to you. We have seen a number of memos similar to the ones we have been discussing, where we find the same language incorporated in the last paragraph, "In my mind, he understood that if there were a job action," "In my mind, it was my impression that he knew that he was supposed to do this," "In my mind," et cetera, et cetera, et cetera.

Reading that, one gets the impression—and these are all different offices who were using the same term, "in my mind." Can you give us an explanation as to why these various different individuals used the same terminology to justify constructive or actual knowledge on the part of the dismissed controllers?

Mr. Gunter. It appears to me that in the early part of December, referring back to the meeting—which I didn't recall and still don't—that the decision was made that undoubtedly this was additional data or needed more firm data, and it's very possible that I communicated to the area managers that if they did not—if they did not cancel that leave, I wanted to know it; if they did, I wanted it documented and I wanted it clear—and I probably said, in their mind there's no doubt that they communicated that. And I would assume that it possibly came from me.

Mr. **Molinari**. OK. So that you may have instructed these individuals to give you a reference that it simply was a recollection in their own mind as to whether the individual controller knew that his annual leave was cancelled or to be cancelled, and based upon that, a dramatic step would take place with somebody receiving a discharge notice?

Mr. **Gunter**. They had already received the discharge notice, sir.

Mr. **Oberstar**. If the gentleman would yield.

In the testimony before the MSPB, you were referred to and responded to the final paragraph of Mr. Winslow, and when asked did it have any bearing on your decision to terminate Mr. Iwanski, he said, "He knew that annual leave was cancelled if we had a strike or job action," relied upon that. But the memo did not exist until December.

Mr. **Gunter**. I cannot recall, Mr. Chairman, but undoubtedly there was some data somewhere in front of me that influenced my decision in that area. Mr. Winslow's statement is undated, and that possibly could have been there in front of me at the time.

Mr. **Oberstar**. It was accepted into the record, though, of the MSPB hearing.

Mr. **Gunter**. I am sorry, I am not following.

Mr. **Oberstar**. That memo was accepted into the hearing in the MSPB proceeding.

Mr. **Gunter**. Yes, sir, I assume it was.

Mr. **Oberstar**. What was the sequence of events? When was Mr. Iwanski issued a letter of notice of proposed dismissal, proposed letter of dismissal?

Mr. **Gunter**. According to—the proposed removal here was dated August 8, and I show that he signed for it on August 10, two days later.

Mr. **Oberstar**. When you were asked in the MSPB proceeding about this Winslow memo, you said that it had a bearing, an effect on your decision because it put in your mind that Mr. Iwanski knew that annual leave was cancelled if we had a job action, a strike. But that memo was created long after you issued him his notice.

Mr. **Gunter**. Sir, you might be right, but I don't know that, looking at it. It's undated. It doesn't have a date on it, and I cannot verify one way or the other.

Mr. **Oberstar**. Well, we are having a problem with these phrases, "In my mind." They all seem to have surfaced at about the same time; and they couldn't have or it's unlikely that they would have spontaneously appeared in the minds of several people all at about the same time for the same purpose.

Mr. **Molinari**. Mr. Chairman, if I may add.

Mr. **Oberstar**. Yes.

Mr. **Molinari**. All of these names, all of these names appeared on that list in the memo which the gentlemen at the table don't recall having taken place. So that it would appear to somebody sitting up here that it was more than just a coincidence that all these individuals—four, five—that appeared in the December 7th meeting that nobody recalls as needing additional information, and then we find these memos inserted in the files with the similar language, "In my mind," so-and-so, so-and-so, so-and-so.

Are you denying, sir, that you recall that you recall any meeting? You don't recall having had such a meeting. Yet we do find, in looking at the files, documents that appeared to be furnished pursuant to what took place at that alledged meeting, to beef up the file to justify the case at MSPB or eventual court cases.

Now I am giving you an opportunity to tell us to the best of your recollection: why the creation of these documents?

Mr. GUNTER. I would assume that the creation of these documents must have come out of the meeting which was dated, I believe, December 7. I would assume that that's where it came from, seeking additional statements, verifications.

Mr. MOLINARI. So there probably was a meeting then, on December 7?

Mr. GUNTER. Oh, I accept that, sir. You showed me that it was. I accept it. I just don't remember it.

Mr. OBERSTAR. In your earlier response, would that have also included the undated memo that information developed?

Mr. GUNTER. It possibly could and couldn't. I don't know, sir. I really don't.

Mr. MOLINARI. That is all the questions I have on this score, Mr. Chairman.

Mr. OBERSTAR. Well, Mr. Gunter, is it not a fact then that the undated memo, the undated Winslow memo, was actually written following the December meeting?

Mr. GUNTER. No, sir, I cannot testify to that that it was.

Mr. OBERSTAR. All right. Well, then explain for us how it is that Iwanski is identified in the December 7th meeting—that is, the Iwanski case was identified—as needing additional data; yet no additional data or documentation other than the undated memo from Winslow was introduced into evidence before the MSPB or showed up in his file?

Mr. GUNTER. I can't answer that. I don't know.

Mr. OBERSTAR. Well, how do you, or can you, explain the inconsistency between the notation that appeared on the Iwanski envelope, which you have already seen, saying that a statement was received, the inconsistency between that and the fact that the only additional other statement was the undated Winslow memo?

Mr. GUNTER. I have no recollection there, Mr. Chairman, as to the date of that. It could possibly have been after that meeting.

Mr. OBERSTAR. Could that memo have been inadvertently left out of the adverse-action file?

Mr. GUNTER. I don't know, sir.

Mr. OBERSTAR. Why wouldn't Winslow include the third paragraph from the undated memo, which is only a one-line, but a line which is a damaging one, why wouldn't Winslow include that paragraph in the memo he prepared for Mr. Erickson much earlier, in August, August 28?

Mr. GUNTER. Sir, to the best of my recollection, when we had to follow up or one of the other gentlemen followed up to get a statement from a supervisor, my instruction was that they go to that supervisor and I wanted him to tell the truth and to let me know did you or did you not cancel that annual leave, because it's a big bearing upon my decision. And if he did not cancel it, I made it very clear that I did not want him saying that he did. But if he did, I wanted him to tell the truth and I wanted him to verify within himself and write me a statement that, "Yes," and I may have said back then earlier that I want to know that in his mind he cancelled that leave if he makes that statement and puts it in writing. I was after the truth one way or the other, and that could have happened earlier.

Mr. OBERSTAR. I will accept that. That is what you should have been doing. That is your responsibility to have the truth about these individuals and their relationship of their status on annual leave.

What I am trying to get at is why did it take 'til December for these notations to get into the file?

Mr. RANDALL. Mr. Chairman, may I make just one remark? Mr. Kupietz reminds me that the MSPB files where the files were sent to the Board in November of 1981, and therefore if the Winslow file or Winslow memorandum had been a part of that, then presumably it would have already been sent to the MSPB prior to the December meeting, if there were such a meeting.

Mr. OBERSTAR. Well, but there was a special appeal to the court, which Mr. Manrose accepted, and he accepted that memo at that time.

Mr. Kupietz, do you have a comment?

Mr. KUPIETZ. No. I wasn't part of that proceeding, so I am not aware of it.

Mr. OBERSTAR. How does it happen that the Iwanski memo is very similar to the memos bearing a December date found in the files of other controllers who were also identified as needing additional data? Does that stem from your statement a moment ago that you wanted these supervisors to have it in their mind clear as to what was the status of a controller on a particular date?

Mr. GUNTER. Yes, sir, that's possible that that came from me.

Mr. OBERSTAR. How is it, then, that the subcommittee has been unable to find one memo dated August or September that has language like this? How is it that such language didn't appear in memos until December when they were put in the files? Why weren't they done closer to the job action?

Mr. GUNTER. I am assuming that what I had and what I was looking at, that the documentation was sufficient. And when it went to the Regional office, undoubtedly they—they reviewed it and identified within themselves that additional documentation was needed. And so I went back to the people who were involved or who should have been involved, his supervisor. And I don't know, like I say, sir, I don't know when that was put in there. It appears maybe after December 8. I honestly don't know.

Mr. OBERSTAR. But isn't it very likely, given the sequence of events, that this was a document created much later in the process, probably after the December 7th meeting and closer to that mid-December date that we were talking about earlier?

Mr. GUNTER. It appears, yes, sir.

Mr. OBERSTAR. So then the testimony that you gave at the MSPB is inconsistent with the information that you are providing now.

Mr. GUNTER. If that was true, if it was true that that's when that document was dated, then I would stand corrected.

Mr. **Oberstar**. Mr. Miller, you are very familiar with the sign-in log form. We would like you to take a look at a copy of a sign-in log, [Exhibit 17] and apart from the entries thereon, describe for the subcommittee the entries that are required to be entered on each side of the form.

Mr. **Miller**. The front of the log, or the personnel log, has the date in the upper left-hand corner. The upper right-hand corner normally depicts an area of specialization. And in this particular case this one depicts the midnight shift.

And the first column on the left contains the handwritten or printed names and the signatures adjacent to the names, and there is an initial column, and the time-on, time-off. And then the functional duty assignment is in the next column down. The hours on duty and the hours of leave on the front of the form. The particular one here, because it's a midnight and we run with a very limited crew on the midnight, it is all on one sheet. All of the midnight controllers sign in on one sheet.

And it contains the assistant chief, high altitude, the east area, the north areas, the west area, and the west wing areas of specialization.

The back is another document that is used in various other operations in the center and is a daily record of facility operations and is used by all of the areas to describe facility outages within their airspace, significant weather, metro observations, and various other occurrences during the shift of that particular area of specialization used at the watch desk and in the specific areas of specialization as a facility operational log.

At the bottom of it there is a certification for the entries made above.

Mr. **Oberstar**. All right. Thank you.

How far in advance of the date scheduled for duty is this log made up or how far in advance is the information on which this log is based made up?

Mr. **Miller**. On the front side, or the personnel log, the various areas do it a little different in each area. Some make it up the day before, and some make it up the day of the operation as far as the personnel logs go.

The back of the log is made up the day—it's an ongoing, dynamic log of the operations within the specific area that it's relative to.

Mr. **Oberstar**. All right. What is the purpose of the signature of the watch supervisor on the back of the form?

Mr. **Miller**. That certifies, when used as a facility operations log, that the above entries are correct for his portion of the shift.

Mr. **Oberstar**. Is the presence or the absence of that signature relevant to the entries on the front side of the sign-in log?

Mr. **Miller**. The personnel log is the front side. No, sir.

Mr. **Oberstar**. We have a log, and we have others on which there is a signature of the watch supervisor, and we have a blank on that side. Is that customary?

Mr. **Miller**. The one I have is the same.

Mr. **Oberstar**. What then is he certifying if there is a blank page there?

Mr. **Miller**. Who was on duty.

Mr. **Oberstar**. Does that signature certify what was on the front side of the page?

Mr. **Miller**. No. It's a reference for who was on duty at the time. I do not believe it's a certification unless there is entries on the back side.

Mr. **Oberstar**. Well, ours has absolutely nothing on that page. What is he certifying?

Mr. **Miller**. Just who was on duty. It's not a certification per se. It's a reference for who was on duty.

Mr. **Oberstar**. Is that who is on duty, is that the list of people on the front side of the page?

Mr. **Miller**. Yes.

Mr. **Oberstar**. So his signature on the back certifies to whatever information is on that page as well as on the front of that page?

Mr. **Miller**. I don't believe that's so, no, sir. Some areas we do sign, and some we don't. The certification is for the back side. It says "the above entries," "I certify the above entries," being that page.

Mr. **Oberstar**. OK. So even if there are no entries, the watch supervisor would sign just to verify that he was there?

Mr. **Miller**. Or an area supervisor, if it's an area personnel log, could. And some of them do, and some don't. Yes, that's correct.

Mr. **Oberstar**. How is there verification for the front page? How do you obtain verification for the front side of that page?

Mr. **Miller**. The front side of the page is self-evident. The signatures verify themselves.

Mr. **Oberstar**. Normally, are the sign-in logs then signed and certified by a supervisor?

Mr. **Miller**. The sign-in logs per se?

Mr. **Oberstar**. Yes.

Mr. **Miller**. Some of them do, and some don't. No, there is no certification other than on the operational log, which is a separate log from that. If we had a reference of who was on duty, we would go to the operational log, and then because he would make operational entries in his specific area of operation, he would also sign the bottom. There would be two and sometimes three or four signatures on the bottom of that log.

Mr. **Oberstar**. All right. Let's distribute Exhibit 18.

[Pause.]

Mr. **Oberstar**. Before we get to that one, again let's make clear that what the significance is of the signature on the back of the sheet. It refers only to the information on that side of the page, as you said earlier.

Mr. **Miller**. Yes, sir.

Mr. **Oberstar**. It does not refer to the information on the front side of the page.

Mr. **Miller**. Yes, sir.

Mr. **Oberstar**. All right. You said earlier, in response to another question, that the controller coming in, signing or initialling alongside of the printed name is the verification that the person was there.

Mr. **Miller**. Yes. Yes, sir.

Mr. **Oberstar**. There is no procedure, I understand you to say, for any supervisor or any supervisory personnel to verify the entire sheet?

Mr. **Miller**. Not the personnel log portion, no.

Mr. **Oberstar**. Nobody signs; this is not common practice for anyone to sign that sheet?

Mr. **Miller**. Some of the areas do, and other ones don't.

Mr. **Oberstar**. So there is an inconsistent practice; it is not a generally consistent practice within the Chicago Center?

Mr. **Miller**. That's correct.

Mr. **Oberstar**. All right. Well, the sign-in log for north wing, dated 8/3/81, with the 0700 to 1500 shift designation in the upper right-hand corner, is what you have in hand. This is a copy of the sign-in log that appeared in controller Grow's adverse-action file that went to the MSPB. This document was prepared by the Chicago Center, as we understand it, as evidence in the first MSPB hearing.

Now we are going to show another copy of the same document. This copy was made from the original sign-in log. That log was introduced in evidence in August 1984 as part of the remand hearings. This copy contains both the front and the back side of the form.

Now take a moment and look at those two forms and tell us what difference you see in the two.

[Pause.]

Mr. **Miller**. There was a stamp used on the back side of the second document. The remainder of the information appears to be identical.

Mr. **Oberstar**. And the stamp appears to have bled through the document, does it not?

Mr. **Miller**. Yes, sir.

Mr. **Oberstar**. Why was the signature stamp placed on the log, and when would that signature have been stamped on there?

Mr. **Miller**. I believe it was placed sometime late in 1981. I am not sure of the date that it was placed. The discussion in the war room was that when we had completed all the reviews, that the signature on the back would show that they were all completed.

Mr. **Oberstar**. Who would have put the stamp on there?

Mr. **Miller**. I do not know, sir. I have initially testified that I thought someone in the war room would have put it on, but testimony by the other people that they interviewed said they did not.

Mr. **Oberstar**. Who kept the stamp?

Mr. **Miller**. Originally, my secretary in the quality assurance office had two stamps made. And the reason she had them made, she told me later, was that I was not there to initial or to sign the familiarization trip requests, and that was one of the responsibilities of the office at the time, and she had two stamps made and one of them did appear in the war room.

Mr. **Oberstar**. And that stamp was kept in the war room at all times?

Mr. **Miller**. I do not know until we were disbanding the war room. I located it in the desk in the war room. I do not know how long it was there.

Mr. **Oberstar**. All right. Can you tell me why 1981 copies of the log do not show the presence of that signature stamp but copies made in 1984 do?

Mr. **Miller**. It evidently was put on after the Xerox copies were made for MSPB or the files were made that were sent to the Region initially and thence to MSPB.

Mr. **Oberstar**. After November 1, apparently?

Mr. **Miller**. No, it could have been after—any time after September—after September 14.

Mr. **Oberstar**. After September 14, possibly after that shipment, that first shipment went up?

Mr. **Miller**. Yes, sir.

Mr. **Oberstar**. Why would that stamp have been affixed at so late a date?

Mr. **Miller**. To show completion of the review of the files, I believe would be the answer. I am not positive of the reason it's on.

Mr. **Oberstar**. Who had authority to affix that stamp? Did you give authority to anyone other than your secretary?

Mr. **Miller**. No, sir. I did not give her authority.

Mr. **Oberstar**. You didn't give her authority to use it. She didn't have authority. Who did have authority? You? You, obviously. It's your stamp. Why would you have used the stamp instead of a signature?

Mr. **Miller**. I had no reason to. I did not know the stamps existed until we were cleaning the desk out of the war room.

Mr. **Oberstar**. You did not know of the existence of the stamp?

Mr. **Miller**. That's correct.

Mr. **Oberstar**. Your secretary said she had the stamp—according to your earlier testimony—had the stamp made because you were busy and you weren't available at all times, they needed that thing. Did it ever arouse your curiosity as to who might have used this stamp and did you ask around and try to find out who would have used it?

Mr. **Miller**. Yes, sir. When the issue came up in the hearings, I asked the majority of people that had worked in the room whether they had used it. I tried to find out who had stamped the documents.

Mr. **Oberstar**. Did anyone own up to using it?

That's kind of like my house. A lamp occasionally gets knocked over and breaks, and we ask the kids, and nobody did it. A plant got turned over the other day. We lined them all up. Nobody did it. So we say, "Mr. Nobody lives here." Nobody did it.

And yet it appears.

Mr. **Miller**. Yes, sir.

Mr. **Oberstar**. What was the purpose—again let me come back to this—what was the purpose of stamping the back side of that document if there was nothing there to be certified?

Mr. **Miller**. The only purpose that I am aware of is the completion of the administrative review of the documents.

Mr. **Oberstar**. Well, it sounds——

Mr. **Molinari**. Would the gentleman yield for a second?

Mr. **Oberstar**. It just sounds to me utterly stupid to have stamped it unless there were some other purpose.

Yes, I yield to the gentleman.

Mr. Molinari. Did you have another stamp at home, Mr. Miller?

Mr. Miller. Yes, sir. There were two stamps.

Mr. Molinari. You kept one at the war room and one at home?

Mr. Miller. No. I took the one home from the war room when I found it, and later I discovered the secretary still had a second stamp and I confiscated that also.

Mr. Molinari. And now you have three?

Mr. Miller. No. Only two.

Mr. Molinari. Your wife, I believe, gave a deposition indicating that she knew of the existence of a stamp, and I think, if I am not mistaken, she said something about using it on checks. Is that one that would have been kept at home?

Mr. Miller. That was more than likely the first one I took home, yes.

Mr. Molinari. Have you cut off that practice?

Mr. Miller. Yes, sir. I also cut the stamp in half.

Mr. Molinari. Did you?

Mr. Oberstar. I am still perhaps as puzzled as you are about how this all occurred. Earlier, from my notes of your testimony, the documents were sent up to Region went between October, early October, and November 5. Those were copies of the files. If they were copies, then why was a stamp needed?

Mr. Miller. We still had not completely reviewed all the files, completed the review. When the last packet was sent up initially, we did not have all of the T&As in yet through completion of the pay status of the individual.

Mr. Oberstar. So you can only speculate then that some well-meaning person in the war room took it upon him or herself to complete the document, complete the file, show that its review had been closed out, and then put that stamp on, and in the mind of that official, then that closed the circle, completed the file, completed the review action, and said this is now official. Is that it?

Mr. Miller. I have no other explanation, sir. That's it, Mr. Chairman.

Mr. Oberstar. As we sorted through all these documents, we found they sort of grew at stages. Names were added, other information was added, then the stamp was added. Who would have thought it necessary? You know the people in there. Who would have thought it necessary to do this?

Mr. Miller. It was mentioned the people that were in on the final review were Mr. Cullerton, Mr. Peterson, Clyde Campbell, and Marsha Divenere were all in when we were doing the final reviews on the documents.

Mr. Oberstar. Yes. And in our information or information we made available to the subcommittee, including depositions taken from those people, each one of them said they had never seen the stamp or used it.

Mr. Miller. Yes, sir.

Mr. Oberstar. That stamp just grew legs and walked over there and jumped on those files all by itself.

[Pause.]

Mr. Oberstar. Did any of those people have any sense that these were official documents and that altering them represented a very serious action?

Mr. **Miller**. I am not sure amending them was being done on an ongoing basis by some of these people. When you say—you're saying "alter," you mean change the substance of?

Mr. **Oberstar**. Making these entries and changes. It appears that what has happened is people just lost sight of their role and appeared to exercise a proprietary attitude towards these documents, that they were theirs to change, to amend, to do as they felt was proper or appropriate under the circumstances. They were changing people's records and making a dynamic, powerful impact on people's lives in the process.

Did you ever inquire of anyone? Did you see that stamp yourself in the files and then ever inquire of anyone who worked in the war room about how it appeared there?

Mr. **Miller**. Yes. As I said, after it was brought out at the MSPB file, I went back and asked everyone that was still in the agency whether they were involved in that, and they told me no.

Mr. **Oberstar**. And you believed every one of them?

Mr. **Miller**. I had no reason not to believe them.

Mr. **Oberstar**. Well, how could all of them be telling the truth?

Mr. **Miller**. Well, there was some people that were not there that have left, had left the agency that I have not talked to. So the ones I talked to could have all been telling the truth and one of the other people could have used it, yes.

Mr. **Oberstar**. Could you name those who had left the agency?

Mr. **Miller**. That had worked in the war room——

Mr. **Oberstar**. Yes.

Mr. **Miller** [continuing]. That had left the agency when I was inquiring: Michelle Klinkhammer; Marge Elliott, who was my secretary; Marsha Divenere, who has not left the agency but has left the Chicago area.

Mr. **Oberstar**. These are people who might have, except that your secretary has already been excluded. You said she told you she had not used that stamp.

Mr. **Miller**. No, sir, I don't believe I said that. I have never asked Ms. Elliott whether she used the stamp or not.

Mr. **Oberstar**. I may have misunderstood what you said earlier. I will stand corrected on that.

If you then do not know who put the stamp on those documents, who could you know when it was put on?

Mr. **Miller**. I believe I said I don't know when.

Mr. **Oberstar**. You don't know when.

Mr. **Miller**. It would be after September 14. Other than that, I made no speculation.

Mr. **Oberstar**. You are speculating, but you are not saying that you know for certain.

Mr. **Miller**. No, sir, I do not know.

Mr. **Oberstar**. Mr. Shewfelt, did you notice the stamp appearing in later versions of the documents?

Mr. **Shewfelt**. No, sir, I wasn't familiar with this issue until I heard about it yesterday.

Mr. **Oberstar**. This is new information for you?

Mr. **Shewfelt**. Yes, sir.

Mr. **Oberstar**. You didn't review the files to that extent.

We are going to follow one further line of inquiry and then recess for a moment.

In February of 1983, Mr. Miller, you amended your August and September 1981 time-and-attendance sheets to claim an additional 204 hours of compensatory time worked during the first five weeks of the strike. Why was this done?

Mr. **Miller**. It was done—the discussion that had created this was in the Regional office, and it was during the MSPB hearings in 1982. In November of 1982, a discussion arose about paying parking a block from the Federal building downtown. And I was carrying boxes of files to the Federal building. And the branch chief at the time said that I could park much cheaper in the underground and that henceforth I would not be paid for parking at the more expensive lot.

And at the same time, we discussed, when the MSPB hearings were going until 10 or 11 at night, the probability of staying in Chicago rather than driving 45 miles back out home; and he said that because it was 50 miles—under 50 miles, that that would not be allowed either.

In the discussion that I was having with the branch chief, the division chief walked in and asked if—it was getting rather loud—and the division chief asked what the problem was, and I relayed that to him.

And the statement was made, "Well, you're getting paid all of the time," and I said, "No, sir, I have not received additional time. I have just been going on straight time." And he said, "Well, you're entitled to it, and if you can document your additional time, you will receive comp time for that."

Mr. **Oberstar**. Was that before the MSPB process?

Mr. **Miller**. No. That was during.

Mr. **Oberstar**. During the MSPB hearing.

Mr. **Miller**. At that time, I was removed as FAA advisor and sent back to the facility.

Mr. **Oberstar**. Well, that discussion you said took place in 1982 when?

Mr. **Miller**. I believe it was the last week of November, either the last week of November or the first week of December.

Mr. **Oberstar**. So it wasn't until then that you were certified or approved for the compensatory time?

Mr. **Miller**. I had made no request for it prior to that, and the division chief said that to fill it out and put in what time I had been in the facility.

Mr. **Oberstar**. Why didn't it occur to you earlier to ask for compensatory time? You were putting in long hours, putting in a lot of time.

Mr. **Miller**. I just did not put it in. I——

Mr. **Oberstar**. You waited 18 months before raising this matter?

Mr. **Miller**. Yes. It came out of a discussion or altercation at that time.

Mr. **Oberstar**. I can well appreciate that. How did you keep track of all the hours that you worked?

Mr. **Miller**. Other various methods. I used the travel vouchers to and from the region and to downtown Chicago, and I used desk calendars. I used notes from telcons that I had copied when I was working to coordinate the times that I was there, and I believe I was very lenient in the amount of time that I put in for.

Mr. **Oberstar**. Now, that relates to the testimony or involvement in the MSPB proceedings. How about the time August–September 1981, post-strike, immediately post-strike?

Mr. **Miller**. Where I had gone to the Region, made trips to the Region, I used the travel vouchers going to the Region. I used the telcon dates and memos from when I had been there for telcons.

Mr. **Oberstar**. How about the hours put in at the Center?

Mr. **Miller**. That's what I am referring to. The telcons were when I was at the facility when I had notes of when I took telcons and notes of occurrences during the strike.

Mr. **Oberstar**. Did you use a sign-in log for the time that you checked into the Center and time you checked out?

Mr. **Miller**. No, sir. None of the administrative personnel did.

Mr. **Oberstar**. Administrative personnel were not required to sign in. You had said that earlier, I recall.

Mr. **Miller**. Yes, sir.

Mr. **Oberstar**. So you were able to verify then your record of time spent at the facility through such things as travel vouchers, telephone conversation notes?

Mr. **Miller**. Yes, and personal data file; a calendar. I had a pocket calendar also that I wrote scheduled events that had happened.

Mr. **Oberstar**. You reconstructed that according to documents we have for about a six-week period of time. Mr. Bacon, John Bacon, was not at the Center in 1981, yet he certified your 1983 amendments. What did he rely upon to make that certification?

Mr. **Miller**. I do not know, sir.

Mr. **Oberstar**. Well, he did certify. Didn't he ask you for verification?

Mr. **Miller**. No, sir, he did not.

Mr. **Oberstar**. According to the amended T&A that we have found in the course of our inquiry here, in the first five days of the strike you certified working 93 out of a possible 120 hours. That is an average of 18 hours a day without meals. What were you doing during that time?

Mr. **Miller**. We were formulating files. And I was three days without leaving the Center. I never left the Center for three days. As I said, that was a conservative estimate.

Mr. **Oberstar**. You slept right there on a cot or something?

Mr. **Miller**. For the most part, we didn't sleep. I went two days without sleeping.

Mr. **Oberstar**. We do have a log that showed you signing in at the front door at 6:56 a.m., for Monday, August 3, and have an original T&A for Monday, August 3, that shows you listed as working at 7, it was amended to show that you start work at midnight, but a front-door log shows a sign-in at 6:56.

Mr. **Miller**. Okay. The front-door log was placed there for people entering and leaving. I believe I was at work midnight that night, and I had gone home to get a clean shirt and came back in the morning around 7. I was, I believe, gone for 15 or 20 minutes.

Mr. Oberstar. Well, you certainly put in an inordinate amount of time. Most of that time was working on records, is that what it was?

Mr. Miller. Yes, sir, and various other operational requirements in the facility.

Mr. Oberstar. At this time the subcommittee will take a ten-minute recess—did the gentleman have a question?

Mr. Molinari. Yes. On the same score, Mr. Chairman.

On the 4th of August, the day after the day we were just discussing, you show that you worked originally from 0700 to 1900, and then you amended it on the 4th of August to show that you were working from 0400 to 2400. Yet you signed in at the front door at 8 a.m. Now, how do you square that with the fact that in one case you said you started at 7 in the morning and the other case you said you started at 4 in the morning and you signed in at 8:00 in the morning?

Mr. Miller. The sign-in time was not necessarily a start work. I believe on Tuesday, was that, the 4th, I believe I went down very early Tuesday morning to get a rented van from Kaufman Brothers—this was on-duty time—that was to be used by the Center as the Center van. So I did not start work at that time. I returned to the facility at that time; that's correct. That was not a sign-in log for pay purposes. That was to keep track of who went in and out of the building and when.

Mr. Molinari. Well, you came back a couple of times. You mean you only signed in some times and not other times?

Mr. Miller. Yes.

Mr. Molinari. Okay. Then let's go to August 6. You claim to have worked originally from 7 in the morning, 0700, to 1900; amended that to 0500 to 2400. That day you signed in at 9:13.

Mr. Miller. That may have been one of the times not signed in. I returned to the building at that time. I also was hauling people to and from work in the van that we had rented.

Mr. Molinari. What you're telling me is that when you reported for duty at whatever time, you wouldn't sign in normally and show the time that you reported for duty?

Mr. Miller. I don't believe I went home that night at all, or the previous night.

Mr. Molinari. Well, I could go on.

Mr. Miller. Yes, I imagine you can.

Mr. Molinari. And we show the same pattern, and it doesn't square with the hours. Now, you are the one that has to explain why, and I guess your explanation is that your sign-in has no corroboration and no connection whatsoever to the hours that you worked. Is that what you're telling the committee?

Mr. Miller. The sign-in, yes, was just when I happened to have entered the building.

Mr. Molinari. When you worked a regular tour of duty. So let's take, for example, 0800, would you sign in at 0800?

Mr. Miller. No. I administratively did not sign in at all for tours of duty.

Mr. Molinari. So when you signed in, it would not have been for tours of duty?

Mr. Miller. That's correct.

Mr. **Molinari**. Thank you, Mr. Chairman. We will take the recess, if you want.

Mr. **Oberstar**. You only signed in at 0400, 0500, 0500, 0300 on 4, 5, 6, 7 August?

Mr. **Miller**. I'm sorry, I didn't hear the whole thing.

Mr. **Oberstar**. Well, the pattern of sign-in is very curious for us here. We don't find—and we are trying to correlate times in your records. We don't find a correlation between the times shown on your T&A record and time shown on the sign-in log.

Mr. **Miller**. I don't believe there was any, no, sir. The times that I returned and I was going over to the Holiday Inn for meetings with the staff and the people that had been put on the gates from the deputies, and I would pick them up and bring them up.

Normally, when we had no one in the front administratively, we put the book in front of the door, in front of the locked door, and requested that everyone that came in and out during these hours sign in and out. When there was somebody there as an attendant at the front door or a receptionist—and we had a telephone operator there normally—then I don't believe I ever signed in or out during the day when I had come or gone.

Mr. **Oberstar**. You didn't sign at all, but at night you would have?

Mr. **Miller**. Yes. When we slid the sign-in table over in front of the front entry door.

Mr. **Oberstar**. But for the 3rd there is no sign-in.

Mr. **Miller**. Well, we hadn't brought the sign-in log and mandated that people sign in and out during the midnight hours there yet.

Mr. **Oberstar**. You hadn't done that?

Mr. **Miller**. No, sir. And we had initially just the visitors were signing in. Then we made a request for a short period of time that everybody sign the log when they came in so we knew who was in the building.

Mr. **Oberstar**. When did you establish that procedure?

Mr. **Miller**. I believe it was the third—the second—I'm sorry, the third day of the strike, Tuesday or Wednesday——

Mr. **Oberstar**. The sixth?

Mr. **Miller**. [continuing]. We asked—or Thursday—I'm sorry, sir?

Mr. **Oberstar**. On the 7th your amended T&A showed that you started at 0300 but we don't have a front-door log sign-in.

Mr. **Miller**. OK. I may not have been out or gone out that night. I did spend multiple nights at the facility.

Mr. **Oberstar**. Would that have been one of the nights you spent at the facility?

Mr. **Miller**. It may have. I don't know which ones they were.

Mr. **Oberstar**. Thank you.

The committee will take a ten-minute recess.

[Recess.]

Mr. **Oberstar**. The subcommittee will resume following its recess.

We are going to try to clear up some apparent inconsistencies that occurred in the course of the testimony.

Mr. Miller, harking back to your statement that 99 percent of the documents sent to the Regional office were original documents in the second shipment.

Mr. **Miller**. I thought I had said 99 percent were the same as the first batch or the original batch sent; not original documents.

Mr. **Oberstar**. Perhaps you would like to clarify, then, in that second shipment. What did you say?

Mr. **Miller**. Okay. The documents, 99 percent of the documents in these packets were the same as the documents in the first packets. The only additions that I can recall are T&As that were not completed when the first ones were sent that were completed when the second batch were sent. Some of them may have had—I think there were very few—amendments to the sign-in logs.

Mr. **Oberstar**. When did Mr. Cullerton start work in the war room?

Mr. **Miller**. He was there when we opened or when we originated the war room.

Mr. **Oberstar**. In August?

Mr. **Miller**. Yes. He—he was working at the O'Hare on August 3, and I believe he reported to the Center on August 4, came out to the Center to give us a hand. He was either in at O'Hare or at the Regional office, I'm not sure which place.

Mr. **Oberstar**. Did he serve as an oral reply official as well?

Mr. **Miller**. Yes, sir, he did.

Mr. **Oberstar**. So he wore two hats. He worked in the war room and served as an oral reply official.

Mr. **Miller**. While he was an oral reply official, he was not working in the war room, no.

Mr. **Oberstar**. When did he start as an oral reply official?

Mr. **Miller**. He was one of the people that coordinated all of the hearing officials and the scheduling of the hearings and so forth.

Mr. **Oberstar**. About when, time-wise? Place that for us in calendar time.

Mr. **Miller**. I believe it was August—I believe the first hearings were the afternoon of August 13, and he went over to the Hilton the day before and had set up the rooms and coordinated getting typewriters and typewriter stands and so forth into the rooms.

Mr. **Oberstar**. In the Behensky case Mr. Cullerton was a witness and was asked how many T&As he recommended for amendment. His answer, "I would say 200."

Question: "Could be 300?"

Answer: "Could be 300."

Question: "Could be up to 300?"

Answer: "3,000 for all I know right now."

Question: "It could be up to 3,000 changes?"

Answer: "I don't know how many. There was a considerable number. I would say approximately 200."

The point of the testimony is that there were an awful lot of the changes that were sent up, and we don't seem to be able to reconcile that statement about the vast, massive number of changes made and your statement that that second batch were copies of the originals sent up. Which is which?

Mr. **Miller**. I don't believe they are contradictory. I think that Mr. Cullerton was referring to the logs that Clyde Campbell was making up, and he was making T&As after the fact, after the people had been—received their final letter. And he had come down into the war room and was working on the table adjacent to Cullerton and Peterson when they came back over from the hearings as hearing officials.

Mr. **Oberstar**. Mr. Miller, can you tell me your view of the status of a document after changes were entered upon it, after a name was entered on the sign-in log or annual leave crossed out and "AWOL" written over it: which represents an original document? Is it an original document after the changes are entered, or is it an original document up to that point and then it is a new document?

Mr. **Miller**. I believe it is—and you are asking for what my belief or contention is?

Mr. **Oberstar**. Yes.

Mr. **Miller**. As far as——

Mr. **Oberstar**. How do you view that document? What would you call it?

Mr. **Miller**. The document is still original but it's amended to display the actual facts that were known at the time or that we were given to work with.

Mr. **Oberstar**. We have in some cases a couple of generations of documents; that is, the original and then it goes into the file and a copy appears with additional information; then another one appears with further information added. How do we know which is original and which is a copy and which are amendments?

Mr. **Miller**. I believe the original documents are the yellow documents, and some of them had been amended multiple times, yes, sir. That does not change from being the original document. It now displays the correct information as we saw it at the time.

Mr. **Oberstar**. Why was it necessary to change the yellow sheet?

Mr. **Miller**. That's the original document.

Mr. **Oberstar**. Yes. Why was it necessary to change that?

Mr. **Miller**. Well, the determination of the status of the individual was one reason for changing it. If his name had been omitted completely was another reason for changing it and adding it. If his name had been put on, as a couple had, on more than one sheet for one day, they couldn't both be right, he would not normally be assigned consecutive shifts. So there was multiple reasons for changing them.

Mr. **Oberstar**. Why couldn't those notations have been made separately on another piece of paper and the original kept?

Mr. **Miller**. They could have, sir.

Mr. **Oberstar**. Would that have been a more appropriate manner in which to make note of changes?

Mr. **Miller**. Knowing what we do now, yes. But by practice on the ongoing logs day after day, we continuously do change and amend them to show the proper shifts, the proper work assignments, the proper leave status in a fluid basis. It continues to change daily. But if an adverse action should occur, I believe that will be one of the amendments we will make.

Mr. **Oberstar**. In retrospect, mistakes were made.

Mr. **Miller**. Yes, sir.

Mr. Oberstar. The gentleman from New York has questions, and I see we have a quorum call in progress. We can proceed, I think, for the duration of the gentleman's questions.

Mr. Molinari. Do you intend to conclude afterward, Mr. Oberstar?

Mr. Oberstar. Let's see how long it takes to go through the questions that you have. We may be able to. If not, we will recess and come back.

Mr. Molinari. In an attempt to save some time, there was another controller who was listed on that file of 44, Exhibit 14, by the name of Dwight King. Rather than waste everybody's time, since we may be working with the clock, there is an unmarked memo for record that says, "The following statement was read or relayed to the employee prior to August 3, 1981: 'If you are scheduled a regular day off on Monday, August 3, 1981, or Tuesday, or are scheduled annual leave on or after August 3,' " et cetera, et cetera, et cetera.

Then it has the employee's name and "D.A. King" appears alongside it, and it was signed underneath, "Team supervisor David B. Harper."

I contacted Mr. King this week and spoke to him at great length. Mr. King tells me it's a lie, that that statement was not signed by him. The first time he learned about it was when his lawyer called him during discovery and told him that he had been furnished with a statement that he allegedly signed. He never saw it before.

In addition to that, on this 44-member listing, Mr. King happens to be one of the three that is listed as marginal. There again you have a document now signed by Mr. Harper, with the famous words "In my mind" again, "he clearly understood in the event of a strike/job action his annual leave was cancelled."

Now, this gentleman was told that he couldn't come back, and he filed for unemployment insurance. On November 30, 1981, he was asked to appear for a hearing at the unemployment bureau in Aurora, Illinois.

Mr. Miller, I think you attended that hearing. Do you recall?

Mr. Miller. Yes, sir.

Mr. Molinari. Mr. Kupietz, as the attorney, I think you attended it as well. Am I correct in that?

Mr. Kupietz. I was there for some. I don't recall if he was one of the people.

Mr. Molinari. All right. See if some of this will bring back some recollection to you gentlemen. During the hearing as he testified to the circumstances of his annual leave and what he thought the definition of the amnesty period that the President granted the controllers and how it affected him, he gave the explanation, and then he said that he turned to Mr. Kupietz to ask him if he had a legal definition of the amnesty period. Mr. Kupietz, the FAA lawyer, stated, "I explained the definition perfectly."

"Upon receiving the reply from Mr. Kupietz, I remarked that if the definition of the amnesty period was correct, then either I was fired erroneously or illegally."

"Mr. Kupietz replied that, 'Yes, a mistake had been made.' I looked at the hearing officer Mr. deSabato and also at the tape recorder that was recording the hearing. At that point I turned to

Mr. Miller and asked him if he agreed with the FAA lawyer that a mistake had been made. Mr. Miller said that, 'Yes, a mistake had been made.' The hearing officer dismissed the hearing and stated that the claimant was discharged, but not for misconduct connected with his work."

Now, do you have a recollection of that having occurred, Mr. Kupietz?

Mr. KUPIETZ. No.

Mr. MOLINARI. You do not.

Mr. Miller, you seem to have——

Mr. MILLER. I recall the hearings. I don't recall that specific conversation, though.

Mr. MOLINARI. Well, assuming that it did happen. Assuming that it did happen—and we will get the record from the State unemployment bureau—what would you have done?

Mr. MILLER. I don't know. If you're asking me, I don't recall that happening.

Mr. MOLINARI. All right. Let me tell you what was done: nothing. The man called his wife from the hearing room and said, "Honey, I'm going back to work tomorrow," and he told her the wonderful news that occurred. And then he found himself coming back months later for a hearing before MSPB, October of 1982.

Now let me ask you this. During a recess in the hearings, he asked you, Mr. Miller, according to what he said to me in the letter—and he is willing to come in and testify under oath to this effect—why you lied during the MSPB hearings about him and the statements that you attributed to him. And your answer to him was, "I'm sorry, it's a job. I get paid to do it." Do you recall that conversation?

Mr. MILLER. No, sir, I do not.

Mr. MOLINARI. What is the acting chief designation, and who gives you that designation? In your testimony you referred to yourself as "acting chief."

Mr. MILLER. When the chief and the deputy are gone, they select one of the facility officers——

Mr. MOLINARI. Who is "they"? That is what I am trying to get at.

Mr. MILLER. The chief or deputy, depending on if just the chief is going to be gone, the deputy generally becomes the acting, and unless it's for a prolonged period, they normally would not appoint an acting deputy. If they're both going to be out of the facility, then one of the two of them—I am going to say the last one to leave would be the one that would designate someone as acting chief.

Mr. MOLINARI. Well, who appointed you as acting chief?

Mr. MILLER. I believe Mr. Gunter did.

Mr. MOLINARI. Mr. Gunter, we heard you say today that you made mistakes. We read the statement from the administrator that mistakes were made and that things shouldn't have been handled that way. Did you receive any punishment or demotions as a result of your handling of this matter?

Mr. GUNTER. No, sir.

Mr. MOLINARI. Who hired Beverly Miller, Mr. Gunter?

Mr. GUNTER. Mr. Dick Pender, the personnel officer.

Mr. MOLINARI. And let me ask you this, Mr. Gunter, moving along quickly, did you contact J. Lynn Helms, who was then the administrator at the time of the strike?

Mr. GUNTER. No, sir.

Mr. MOLINARI. Or prior to the strike?

Mr. GUNTER. No, sir.

Mr. MOLINARI. Just prior to the strike you did not. You had no telephone conversation with J. Lynn Helms just prior to or shortly after the strike occurred?

Mr. GUNTER. Me calling him personally, no, sir.

Mr. MOLINARI. All right. Did you talk to any of his assistants? Did you try to reach him and talk to somebody else then?

Mr. GUNTER. Okay. Let me ask a question. Are we talking about telcons? It seems like to me that he was on some telcons, but I can't remember the exact time. But if you're talking about a personal telephone call—is that what you're talking about?

Mr. MOLINARI. Did you try to reach Mr. Helms and, failing to reach him, speak to one of his deputies or assistants?

Mr. GUNTER. I have never tried to call Mr. Helms. I did call and talk with a Mike Funello.

Mr. MOLINARI. One last question, Mr. Miller. You said in your testimony before that some of the things that happened here you would not repeat today, knowing what happened. What specific activities would you not repeat?

Mr. MILLER. Methods of amending documents, I believe I said at the MSPB file, if I amended a document that was going to litigation, I would initial and date it, for one thing. Since then the chairman has offered other alternatives that also would be acceptable methods of preserving original documents.

Mr. MOLINARI. Mr. Chairman, I would just like to say—in 20 seconds so we don't have to keep you people here any longer—that I am terribly distressed by what took place at the Chicago Center. Yes, a lot of people through the appeals process got back into the system, but they suffered enormously for something that was not their fault. The fault was on the part of FAA.

They proved their case and got reinstated, but it cost them a lot of time, a lot of money, a lot of distress, and some of them still are suffering from the trauma today. I have very deep and abiding concern with the fact that others who may have had a justifiable case and didn't pursue their remedies properly, like some of these gentlemen that were reinstated, never got back in who should have been reinstated.

I am terribly bothered. I think this is a sad chapter, and I would hope that we can do something to change the record—and perhaps the law—so that we don't see a repeat of what transpired here.

Thank you, Mr. Chairman.

Mr. OBERSTAR. The subcommittee will stand in recess pending conclusion of this vote in the House of Representatives, and return for a very brief conclusion.

[Recess.]

Mr. OBERSTAR. The subcommittee will resume its sitting.

We have a few more points to clarify, and we would like to conclude prior to the next vote.

Mr. Kupietz, harking back to the MSPB proceeding, could you tell me what occurred when Presiding Officer Manrose suggested that you settle the case? I want you to take us through step by step what occurred at that point.

Mr. **KUPIETZ**. Well, we adjourned the hearing until, I believe, the following Tuesday.

Mr. **OBERSTAR**. Would you pull the microphone around so that we can hear you better?

Mr. **KUPIETZ**. We adjourned the hearing until the following Tuesday. I believe that this suggestion was made by Mr. Manrose on the Friday morning, if I recall correctly. And we all just went back to the Regional office—that is, the FAA people—and discussed the—you know, the situation with the case and discussed what we felt we needed to do.

Mr. **OBERSTAR**. Well, did you discuss with anyone in your Regional office, any official in the Regional office, about what to do? Did you discuss with anyone in the Washington office of FAA what steps to take?

Mr. **KUPIETZ**. Well, we had a meeting in the Regional office among several of the officials, and I think—I am sure the contact was made with our Washington office, but I don't recall speaking to anyone directly on that. But I am pretty confident that somebody at some level contacted either our legal office or DOT general counsel's office; I am not sure.

Mr. **OBERSTAR**. Have you handled many cases before the MSPB?

Mr. **KUPIETZ**. Yes.

Mr. **OBERSTAR**. Can you cite a number, any number of cases, just a number of cases in which the presiding officer in the middle of the hearing has suggested settlement?

Mr. **KUPIETZ**. I have had several with another administrative agency. It's not a—I wouldn't say it's a common occurrence, but it's not totally unexpected when something like that happens.

As far as the MSPB is concerned, their overall—well, they have a heavy emphasis, it's my impression, on trying to get the parties to settle, which I think in many respects is not necessarily a bad thing.

In the MSPB area, I don't recall during the middle or a hearing the presiding official suggesting a settlement in one of my cases, although just last week, on a case that was remanded from the Federal circuit court—two cases—the presiding official contacted the other attorney and I and encouraged us very, very strongly to settle the case—not just the FAA, both parties. They have an overriding concern about trying to settle cases.

Mr. **OBERSTAR**. But it is an unusual step in the middle of a proceeding to do that, is it not?

Mr. **KUPIETZ**. Sure. I think it has been.

Mr. **OBERSTAR**. Yes.

Mr. **KUPIETZ**. Yes.

Mr. **OBERSTAR**. And underscores the concern that we have had about this proceeding.

For the panel, what I am puzzling over is why, as we review the testimony, why did the FAA go to such lengths to claim that the evidentiary documents were originals? For example, Mr. Gunter's testimony in the first hearing, in which he described those documents as "contemporaneous documents." Then after it is demonstrated that they were not contemporaneous records, then say that the amendments were proper.

Why didn't you people take the position from the outset that you were amending, you were changing, you were making changes upon original records, and take the position from the outset that that was appropriate, instead of having to be picked up at various points along the way?

Mr. KUPIETZ. Is that question directed toward me? I think that that is precisely the approach that we took at the remand hearing, and we established that except for, I think, a total of two or three or maybe three or four entries on a sign-in log, all of the 73 appellants involved in that proceeding, there were not any amendments and there were not any inconsistencies, and we had the supervisors who created the logs testify that they created them——

Mr. OBERSTAR. Yes, but it was at the original hearing where these were called "contemporaneous records."

Mr. KUPIETZ. Right. Although I wasn't present at the original hearing or part of that, it's my understanding that we were not aware of this inconsistency or what had happened until the records were brought to our attention during the course of that proceeding by the opposing parties. And I think that as soon as it was brought to our attention, the attorney involved in that case stipulated that they had, in fact, been amended or changed. So there was no attempt on our part to disclose or to not disclose that.

Mr. OBERSTAR. When you say "no attempt on our part," you mean——

Mr. KUPIETZ. Well, I thought you were directing your attention to me in terms of the case trial.

Mr. OBERSTAR. I was addressing the question to the entire panel, whoever chose to respond. Perhaps it's best to make that question in the form of a statement.

Mr. KUPIETZ. I could add, if you'd like, that I don't believe there was ever an attempt to hide that from anybody. I think that the facility people felt—and I don't mean to testify on their behalf, but from what I am hearing today, they felt that what they were doing at the time was correct and that they felt it was consistent with the normal use of the records, that the way they had used them previously. I don't think from their perspective they did anything unusual or did anything which differed from, as I said, their normal use of the documents.

Mr. OBERSTAR. So the point is that none of that material presented was true contemporaneous material, it was changed, changed as the process went along.

The gentleman from Pennsylvania?

Mr. CLINGER. Thank you, Mr. Chairman. Just a couple of closing questions and then perhaps a summing up.

Mr. Kupietz, did you represent the agency in cases involving controllers from other centers?

Mr. KUPIETZ. Yes, I did.

Mr. CLINGER. Was there any significant difference between the records that you had available to you from other centers as compared with those that you dealt with from the Chicago Center?

Mr. KUPIETZ. The same types of documents were involved, but certain facilities used different forms. The sign-in log, as I recall, in a couple of facilities I dealt with was a different type of form. But the same types of documents were used.

Mr. CLINGER. How about the records for the oral reply hearing?

Mr. KUPIETZ. I don't recall seeing the form that was used at the Chicago Center at any of the other facilities, no.

Mr. CLINGER. With the notation for the recommendation that it would be subject to additional facility consultation?

Mr. KUPIETZ. Right.

Mr. CLINGER. That didn't exist at any other center that you were aware of?

Mr. KUPIETZ. That's correct.

Mr. CLINGER. Yesterday we had in some of the testimony the implication, I guess, at least the suggestion, that perhaps you all were under extreme pressure, maybe even undue pressure, from either FAA Washington or even the White House to get these people fired and to see that they stayed fired. I am wondering if any one of you were subject to that kind of pressure. Did it exist, or not? Mr. Gunter?

Mr. GUNTER. I think that within FAA there may have been some people who might have been more emotionally caught up in it than others, and you might at different times hear stronger language from different people according to their degree of where they are within FAA.

I think there was probably a lot of emotion and pressure throughout that time, and I think the pressure and the stress was to keep the air traffic system going and moving the airplanes and doing it safely. I think there was a lot of pressure there.

Mr. CLINGER. Did anybody make any improper suggestions about fudging the records, changing records in order to accomplish this result?

Mr. GUNTER. Oh, no, sir.

Mr. CLINGER. Anybody have any suggestions of that sort made to you?

[No response.]

Mr. CLINGER. Well, Mr. Chairman, I think we have had a long day of testimony here, and I just might, in closing, say that I certainly appreciate the candor of the witnesses, their being here today and putting up with a long series of questions to try to get some answers to what precisely went on there. I think that most of us can appreciate the situation that existed, certainly in the early days after the strike commenced. It's apparent that there was a tremendous amount of chaos, confusion, people working very long hours under very, very difficult circumstances to try to address the situation. Therefore, I can understand why mistakes would have been made, why changes were made.

I think it's a little harder to understand changes that were perhaps made in October or November, which apparently did go on.

But I think, to put the thing in context, I think I recognize that the vast majority of the controllers that were removed nationwide were removed justifiably. They had broken the law. Certainly it was proper that they should be removed.

But it also seems apparent that some were improperly removed, and as has been said at the outset of these hearings, we are certainly not here to retry the case or to try to get a reconsideration or anything of that sort, but I think we are concerned, have been concerned. The whole purpose of this hearing is to see that if due process was ignored in this process, to find what needs to be done to ensure that that doesn't happen again.

If, for example, controllers were fired for being AWOL and they were in fact on annual leave and were never informed that the leave was cancelled—and that seems to be at least implicated here that some were listed as AWOL who had not been so informed—then that was clearly a mistake and needs to be rectified.

If, to go further, though, an effort was made to obscure the fact that they were on annual leave, then that poses even more serious questions.

But as I say, I think our job is to try to get to the bottom of it. I think we have gone a fair ways in that direction today. I think our function as an oversight committee is to make suggestions and recommendations of how we can prevent that from happening again and to avoid this kind of situation from arising again.

I thank the witnesses again for your presence and your statements and your willingness to respond to our questions.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Does the gentleman from New York have any further comments?

Mr. MOLINARI. No, Mr. Chairman.

Mr. OBERSTAR. While this concludes today's hearing, it does not conclude the subcommittee's inquiry into the actions that occurred and the results that have followed. We will continue to review and compare information presented in today's hearing with statements made in the MSPB proceedings and other information in the committee's possession.

It is clear that what emerged and what evolved in the course of the post-strike activities of the Chicago Center is a tangled web of actions that at times lacked direction, at times occurred with spontaneity and with an individual sense of mission and without an overall regard for rights of the individuals who were the subject of actions taken. Specifically, records that were changed that affected the lives and livelihoods and the future of people, simple notation, crossing out and writing over of the word "AWOL" without substantial documentation, without concurrent review, without opportunity for the individual for response, is a kind of star-chamber proceeding.

It should not have occurred in this way. Let us hope that conditions improve within the air traffic system so that no action of the kind that occurred on August 3, 1981, will ever occur again.

Let us hope that the strains and the stresses within the system are relieved by the proper kind of action of training personnel and providing adequate numbers of personnel at centers and a responsiveness within the agency from administrator to manager to supervisor and teams that work within this agency, so that the cry of distress will not go unheard, will not go ignored until it bursts in one violent explosion such as occurred on that fateful day, so that the tensions that existed within the agency that created the war room and the war room mentality will not occur again, and that when such actions occur and when it is necessary for files to be reviewed, verification to be made, that rights of the individuals will be respected, that in this system of Government we continue to believe at all levels of Government that one is innocent until proven guilty, one's record cannot be changed without facing one's accuser, a fundamental principle of our Constitution.

The circumstances, even though they occurred five-and-a-half years ago, are a lesson for today and for the future and what occurred then cannot be ignored now because the past is precursor of the future.

We may have another chapter to add to this proceeding. Until then, the subcommittee stands adjourned.

[Whereupon, at 6:18 p.m., the subcommittee was adjourned.]

EXAMINING CIRCUMSTANCES SURROUNDING THE 1981 FIRINGS OF AIR TRAFFIC CONTROLLERS AT THE CHICAGO AIR ROUTE TRAFFIC CONTROL CENTER

MONDAY, SEPTEMBER 14, 1987

(These proceedings, previously in Executive Session, were declared Open, Mar. 3, 1988, by action of the Subcommittee on Investigations and Oversight)

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Chicago, IL.

The subcommittee met, pursuant to notice, at 10:01 a.m. in room 2099, Chicago O'Hare Hilton, O'Hare Airport, Chicago, Illinois, Hon. James L. Oberstar presiding.

Present: Representatives Oberstar, Clinger, and Rowland of Georgia.

Staff present: Scot E. Imus, P. Christopher Goebel, James L. Hedrick.

Attorneys for the FAA: Albert B. Randall and Perry A. Kupietz.

Mr. Oberstar. The meeting will come to order.

Today marks the subcommittee's fourth, and I expect final, hearing on the 1981 firing of air traffic controllers at the Chicago Air Route Traffic Control Center. I hope I am not being too optimistic in making that statement because the last time I anticipated these hearings would be concluded was following our March 10th and 11th hearings.

Unfortunately, at that hearing, we were not told the whole truth. When asked to explain certain key documents or recall specific incidents, FAA witnesses, under oath, misled the subcommittee and did not tell the whole truth. And that is why we are here today to clear up obvious discrepancies that verge on being lies.

To suggest that the patience of the subcommittee is wearing thin is an understatement. When we started this inquiry, our only goal was to get the truth of what happened with the documents and in that long process, following upon August 3rd. I want it clearly understood that is still our objective. The subcommittee will recommend appropriate and forceful action against any individual who stands in the way of that goal.

We will not accept testimony that reflect scenarios that never occurred. We will not accept testimony that defies logic or common sense. After 14 months of investigation in which we have reviewed thousands of records and conducted dozens of interviews, the subcommittee knows far too much to accept anything short of the complete and unvarnished truth.

The Chair recognizes the gentleman from Pennsylvania, Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman. And at the risk of repeating some of the statements that you have already made, I would just like to add a few introductory points as we begin today's hearing, both for benefit of the record and also for the benefit of the witnesses present.

As you have indicated, the subcommittee's hearing today culminates what has been a 14-month investigation into allegations surrounding the preparation, amendment, and transmittal of certain documents used in administrative and court proceedings to substantiate the firing of air traffic controllers from the FAA's Chicago Center, following the walkout in August 1981. This investigation began amid charges of records falsification, destruction or alteration of evidence and improper FAA efforts to conceal those activities from the scrutiny of the Merit Systems Protection Board and the Federal courts.

The subcommittee's effort has examined those charges in great detail, enabling us at this point to enumerate some preliminary findings: (1) during the three-month period following the strike, a very systematic and extensive process was employed by the Agency to change, alter and amend, whatever you choose to call it, the sign-in logs and the time and attendance records which had earlier formed the basis for the removal of the striking controllers; (2) almost without exception, these changes were made in an effort to accurately depict the work attendance or leave status of the controllers, and the resulting records are, in fact, accurate; (3) the FAA, probably for evidentiary reasons, has consistently implied, if not outright stated that these records were prepared in the ordinary course of business; (4) the evidence is clear that both F.A.A. business at the time and the process employed in preparing the record was anything but ordinary; and (5) the Agency has been less than candid in describing this process, including the magnitude of the effort and the persons who directed it.

Our purpose today is to test those preliminary findings and develop a record which is both clear and, hopefully, finally complete. In so doing, the subcommittee will hear from witnesses who have not previously testified under oath and from others who appeared before the subcommittee in March of this year.

From the witnesses appearing for the first time, we expect to gain a clear understanding of the process employed in the alteration of the records contained in the fired controllers' files. We will provide the opportunity for those returning witnesses to explain inconsistencies among their earlier sworn statements and other evidence and information in the subcommittee's possession.

Our purpose in conducting this hearing in executive session is not to be secretive or intimidating. Rather, the subcommittee is employing this method so that we can fully explore a limited number of issues and resolve the remaining inconsistencies and fill the gaps in our knowledge.

Our intention is not to trip anyone up. We merely seek the truth about the process employed by the Agency during this admittedly very difficult time. We will ask probing questions and intend to continue until we are satisfied that the record is clear and unequivocal.

If, following today's session, the subcommittee is satisfied that full and honest disclosure has been made to the best of our witnesses' ability, this investigation, as the Chairman has indicated, will conclude. If not, if that is not our determination, it would be difficult, if not improper, for us not to continue to pursue this matter in all appropriate ways.

With that in mind, Mr. Chairman, I look forward to today's hearing and the prospect of concluding this inquiry.

Mr. **Oberstar**. The gentleman from Georgia.

Mr. **Rowland** of Georgia. I have no statement, Mr. Chairman.

Mr. **Oberstar**. The Chair recognizes the gentleman from Pennsylvania for a motion.

Mr. **Clinger**. Mr. Chairman, pursuant to Clause g(5) of Rule VII of the House Committee on Public Works and Transportation, I move that the subcommittee receive the testimony at today's hearing in executive session.

Mr. **Oberstar**. The question is on the motion from the gentleman from Pennsylvania. Those in favor vote, "aye."

Those opposed, "no."

[No response.]

Mr. **Oberstar**. The ayes have it. The motion is unanimous.

The record will show that three members of the Subcommittee are in attendance.

The committee is now meeting in executive session. And for the purpose of the hearing, it has been understood or made clear to members that we will hear one witness at a time. So, all will be excused except Mr. Peterson and the attorneys accompanying Mr. Peterson.

Mr. Peterson and Mr. Randall and Mr. Kupietz, welcome to our hearing. Please rise and raise your right hand.

[Witnesses sworn, en banc.]

TESTIMONY OF PETER PETERSON

Mr. **Oberstar**. Mr. Peterson, it is our understanding that in addition to your responsibilities as an oral reply official, you worked in the Chicago Center as part of the staff of what was known as the war room; is that correct?

Mr. **Peterson**. Yes, sir.

Mr. **Oberstar**. Our records further indicate that you conducted oral reply hearings from early August until September 29, 1981. Is that correct?

Mr. **Peterson**. Yes.

Mr. **Oberstar**. Did you resume work in the war room after September 29, 1981?

Mr. **Peterson**. I believe I was there for a week or two in October.

Mr. **Oberstar**. When did you begin that work? Just during that one week in October?

Mr. **Peterson**. Yes.

Mr. OBERSTAR. First week of October?

Mr. PETERSON. I think it was the first week of October.

Mr. OBERSTAR. How long did you remain in that room?

Mr. PETERSON. Total time?

Mr. OBERSTAR. Yes.

Mr. PETERSON. The month of September and probably a week or so of October.

Mr. OBERSTAR. Only a week in October?

Mr. PETERSON. That's the best I can remember, yes.

Mr. OBERSTAR. Did your contract of employment have to be extended in order to permit you to work further in the war room?

Mr. PETERSON. I don't know that.

Mr. OBERSTAR. Who called you back to work?

Mr. PETERSON. Bob Miller.

Mr. OBERSTAR. Miller.

Mr. PETERSON. After the oral replies.

Mr. OBERSTAR. It was Mr. Miller that called you back. No other person involved in that?

Mr. PETERSON. No, sir.

Mr. OBERSTAR. Our understanding of the history of that period of time is that your responsibility in the war room was to work with the watch schedules, the sign-in, logs, the time and attendance records for fired controllers. What was the purpose of your work on those records?

Mr. PETERSON. My understanding was the purpose of the work was to try to make the records as accurate as possible and then, in preparation, to forward them on to the Labor Relations Branch.

Mr. OBERSTAR. Who was working there with you?

Mr. PETERSON. Bob Miller, Clyde Campbell, Ray Cullerton, Beverly Miller and that is all that I can recall. I think, also, for three or four days Dave Erickson. And then he moved out. I did not see him again.

Mr. OBERSTAR. When you say the purpose was to make the records accurate, in what respects were they inaccurate?

Mr. PETERSON. In terms of the——

Mr. OBERSTAR. And what were you looking for to make accurate records?

Mr. PETERSON. Basically, what I tried to do was take the watch schedule and the sign-in log and compare those two documents to see if they were the same. And if there were discrepancies, I was to point those out.

Mr. OBERSTAR. To point out the discrepancies?

Mr. PETERSON. Yes.

Mr. OBERSTAR. Did you make changes on either the sign-in logs or the watch schedules?

Mr. PETERSON. Yes. The procedure I used was, again, I did not have an air traffic or a center background. Mine was in personnel. And I would write on a slip of paper when I saw, a white small piece of paper, when I saw a discrepancy. I would leave it on Bob Miller's desk, if he was not in the room, and he would relate to me back whether or not to make the change. And when I made a change, I wrote it next to the change on the sign-in log.

Mr. OBERSTAR. But you did not make notations on the sign-in log, yourself. That was left to another person to make changes. You indicated that you wrote on a slip of paper. Is that correct?

Mr. PETERSON. No. When I was told to go ahead and make the change, then I would write on the sign-in log next to the entry.

Mr. OBERSTAR. I see.

Mr. PETERSON. You know, I would write whatever it was: annual leave or whatever the marking was.

Mr. OBERSTAR. Did you make any notation such as your initials on that log——

Mr. PETERSON. No, sir.

Mr. OBERSTAR [continuing]. To indicate that you were doing that?

Mr. PETERSON. No, not that I can recall.

Mr. OBERSTAR. Now, why was that not done?

Mr. PETERSON. I don't know.

Mr. OBERSTAR. At the time you were working on records, were you aware that the Regional office of FAA already had those records?

Mr. PETERSON. No, I was not aware of that.

Could I add one thing to my last statement, please.

Mr. OBERSTAR. Certainly.

Mr. PETERSON. When I did make a change, I used a pencil and I crossed out in pencil one line on the original entry and I would put the change next to it on the side. I just wanted to elaborate a little bit on the process. And I was not really aware of what Labor Relations was doing. I had been out of the Agency for quite a while. And I was called back.

Mr. OBERSTAR. For example, if there was a notation, "AL," and a controller did not or there was an indication the controller actually was not at work on that day, would you cross out "AL," and put "AWOL"?

Mr. PETERSON. Yes.

Mr. OBERSTAR. We have seen a number of those logs. But you were not aware that any records had been sent into the regional office. Certainly, none of those that you were working on; is that correct?

Mr. PETERSON. I was not aware of that. Yes, sir.

Mr. OBERSTAR. Was anyone in the Great Lakes Region Office of FAA, to your knowledge, involved in the decision to call you back to work in October?

Mr. PETERSON. I'm not aware of that, but it may have been. In my previous job with the FAA, I had been operations supervisor, or I had employment, I had classification in EEO and I had been there for 10 years. I had worked closely with a lot of the hearing officials before they were retired, you know, the Air Traffic Division Manager and certain tower chiefs and everything. So, they knew my name very well. I was a second-level manager. I was trained in interviewing techniques and I was the youngest of the group. And I had left FAA. And that may have been one of the reasons why they called me back.

Mr. OBERSTAR. In testimony before the Merit Systems Protection Board, Robert L. Miller stated that controller files had been sent to the Great Lakes Regional Office between September 14 and October 1. If that was the case, why was there a need for continued review of records at the Center?

Mr. PETERSON. I don't know the answer to that.

Mr. OBERSTAR. Given the timetable that you have verified on your work in the war room, it was clear, given what we know about the case at this point, that you were working on a set of records which came to be incorporated into the second set of shipment of documents from Chicago Center to the Region. Were you aware of that?

Mr. PETERSON. I was not aware of any second set of records at all.

Mr. OBERSTAR. Do you know what happened with the records after you were working on them?

Mr. PETERSON. No. My understanding is that they were put into manilla folders like more or less strike packages and forwarded to the Labor Relations Office in Des Plaines at the regional office.

Mr. OBERSTAR. Did you personally deliver boxes of documents to Jack Brunati in the Regional office?

Mr. PETERSON. Yes, and I have to clarify that. I believe it was Jack Brunati. It may have been Mary DuBois or Jack, but my memory recalls Jack Brunati. And I lived—my home was two miles east of the Regional office and on my way home from the Center, I had two or three, I can't remember how many, boxes. I know I made more than one trip because the box—I could not carry all the boxes at one time. And I had left FAA and I was—and the reason I remember is I was a little reluctant to go back. It is the first time I had been back in the building since I had resigned in 1980. And I went back upstairs. And I believe it was Jack Brunati. I may be wrong. And I carried the boxes up one at a time. And I said, "What should I do with these?"

And he sort of said, "How are you doing?"

"Fine."

And he motioned to the closet where there were a whole series of boxes in there. And I just basically dumped them on the floor there and I went home.

Mr. OBERSTAR. What was in those boxes?

Mr. PETERSON. I do not know for sure, but I would assume that they were the strike packages. But I do not know that for a fact.

Mr. OBERSTAR. Did you put any documents into those boxes?

Mr. PETERSON. I do not recall doing that at all.

Mr. OBERSTAR. Who gave you the boxes to deliver up to the Regional office?

Mr. PETERSON. Mr. Miller.

Mr. OBERSTAR. Do you know of any other delivery of boxes or documents from Chicago Center to the Regional office?

Mr. PETERSON. No, sir.

Mr. OBERSTAR. Other than delivering the boxes which you have already referred to, to Mr. Brunati, did you have any other contact during that one week of time in October when you returned to Chicago Center, contact with Regional office personnel?

Mr. PETERSON. No.

Mr. OBERSTAR. Did you deliver those boxes at the end of that week of work in Chicago Center or was it the following week?

Mr. **Peterson**. I honestly do not remember. I am trying to recall. I remember my car would not start and I was nervous about going out the gate all the time. And I remember Mr. Miller came out and helped me get the car started. But I cannot recall exactly when in September that was.

Mr. **Oberstar**. You mean October.

Mr. **Peterson**. I think it was late September or early October. That is the best that I can recall. I am not really sure.

Mr. **Oberstar**. I think what is important is whether it was the first tour of duty that you delivered those boxes or the second tour of duty there.

Mr. **Peterson**. I believe it was the first. And I am not really sure.

Mr. **Oberstar**. Can you recall for us when your first period of work in the war room ended?

Mr. **Peterson**. I believe it was the end of September or the first week in October. What had happened is that I had to do another series of hearings at the DuPage Tower. I think there were four or five of those. And that was sort of intermingled. I was in the war room during September and early October and at the same time additional hearings were conducted later on. You know, not the ones during August, but later on, at the DuPage Tower for four or five individuals. So that is why it is sort of confused in my mind. I was in and out. I was trying to write the reports up and, so, I am not really sure, to answer your question, specifically. I think I was there the whole month of September and parts of October. But I did the main work on the records in September and—September and early October.

Mr. **Oberstar**. But you worked only one week in October in the war room? Is that correct?

Mr. **Peterson**. I believe so, yes.

Mr. **Oberstar**. And the records you delivered to Mr. Brunati were delivered in September, now? I want you to be—I want you to think about that. So, it is clear—take a moment and think through when that occurred.

Mr. **Peterson**. I am trying to place it in my mind from going through the gate because there was a shack, a little wooden shack outside the gate and I was trying to place it when, if the shack was still there. I really honestly cannot recall. I believe it is late September, but I cannot say that for certain.

Mr. **Oberstar**. It could have been that end of that first week of October.

Mr. **Peterson**. Yes, it could have been.

Mr. **Oberstar**. And now you indicated just now some uncertainty of recollection. And I take you at your word of whether you worked some additional days in October at the Center. Can you be more clear with us about that?

Mr. **Peterson**. I just do not recall that portion of it. I remember that the DuPage hearings were in early October.

Mr. **Oberstar**. Work on controller records at the Chicago Center in the war room was conducted only through that first week of October?

Mr. **Peterson**. To the best of my recollection, that is what I believe, yes.

Mr. Oberstar. While you were working in the war room, were you aware of contacts that other personnel, any of those you mentioned? Erickson, Bev Miller, Cullerton, Campbell, Robert Miller, contacts that they might have had with the regional office?

Mr. Peterson. No. I do not recall any contacts. You know, we were at a long table. I was facing the wall. And what I can remember is Mr. Cullerton was to my left and Mr. Campbell was to my ~~far left~~ against the wall and Ms. Miller was behind me and Mr. Miller was against the wall. And there were no telephones that I saw in there. There may have been on Bob's desk. I just do not recall if there was or not. And if they had contacts, it was not in the room that I can recall.

Mr. Oberstar. You were not aware of any contact and did anyone have any discussion about contact with the Regional office?

Mr. Peterson. Not that I can recall.

Mr. Oberstar. Do you have any idea of how many logs you may have reviewed during that period of time when you were going through logs?

Mr. Peterson. It just seemed like there were pages of them, pages. But I cannot say if it was hundreds or——

Mr. Oberstar. Was there any particular order in which you reviewed those logs?

Mr. Peterson. When I was asked that question, last time when I had talked to individuals on the telephone, I could not recall. I thought it was chronologically. And I started to think more and more—and I am confused on it. It may have been by employee, it might have been by facility. I do not really remember.

I think what hurt me is I did not have the background in the Center operation. So, I cannot truthfully recall exactly which method was used. It could have been by chronologically or it could have been by employee. I am not really sure.

Mr. Oberstar. How would you be sure that you were not reviewing a record twice or someone else reviewing the controller record?

Mr. Peterson. I could not be sure. You know, that is a possibility.

Mr. Oberstar. As you went through these records, did you affix Robert Miller's stamp to any of them?

Mr. Peterson. No, sir.

Mr. Oberstar. Did you see a stamp bearing his signature——

Mr. Peterson. No.

Mr. Oberstar [continuing]. Affixed to any of those records?

Mr. Peterson. No.

Mr. Oberstar. Did you know that there was a signature stamp available in the war room?

Mr. Peterson. No, sir, I did not.

Mr. Oberstar. Did you see anyone using the signature stamp?

Mr. Peterson. No.

Mr. Oberstar. Mr. Clinger?

Mr. Clinger. Thank you, Mr. Chairman.

Just to go back to this question of activities in the war room. You said that you had no knowledge of any—that there was no telephone that you can recall being there and, therefore, no telephone communication with anybody in the Regional office. Did you ever see anybody from the Regional Office in the war room? Did anybody from Regional Office visit the facility at anytime when you were there?

Mr. PETERSON. Not that I could recall.

Mr. CLINGER. Or anywhere in the facility, itself? In the Center, itself?

Mr. PETERSON. I would not know that. I spent most of my time in the room. And, again, I was facing the wall. I do not know—I do not—anybody that I can recall from the regional office, I do not recall.

Mr. CLINGER. So, your routine was to come to the facility, go immediately to the war room and——

Mr. PETERSON. Start taking my supplies and going down there. Right.

Mr. CLINGER. For many hours at a time, I gather.

Mr. PETERSON. Yes.

Mr. CLINGER. They were long days at that stage of the procedure.

Mr. PETERSON. Yes.

Mr. CLINGER. Can you give me some idea in a little more detail about the actual inconsistencies that you were looking for as you reviewed each of these files?

Mr. PETERSON. Well, what I can recall was that there may have been times when somebody was assigned to training and the watch schedule did not properly show that. And I think that is one of the reasons why, you know, I did not have the background or the knowledge to know that and that is why I gave the white slips to Bob Miller. They could have been assigned to—they could have been on annual leave. They could have been swapped, a whole assortment of different conditions could have been, you know, and that is why I think that when I saw the discreancy, you know, the purpose of writing it down: "Is this a valid change?"

Mr. CLINGER. Right.

Mr. PETERSON. That is what I was basically asking.

Mr. CLINGER. You were attempting to get authorization, in other words to indicate the change at that point.

Mr. PETERSON. Yes, to make the change.

Mr. CLINGER. Now, the Chairman mentioned the fact that there are a number of notations where "AL," standing for annual leave was changed to "AWOL." What was the basis for that kind of a change to be made?

Mr. PETERSON. I am not sure, but I would just assume that, you know, the person was supposed to be at a certain place according to watch schedule and they were not in training or on approved annual leave or sick leave or whatever, and, therefore, they were considered to on away without leave.

Mr. CLINGER. And you have indicated that when Mr. Miller would—you would get back a notation from Miller for each of the little white slips that you submitted to him?

Mr. PETERSON. Yes.

Mr. CLINGER. So, you could either make the change or do not make the change?

Mr. PETERSON. Yes, or he would tell me verbally because his desk was behind me against the wall. So, when he was in there, he would say, "Go ahead and make the changes on so-and-so."

Mr. CLINGER. Right. And this was—this procedure was going on all during September.

Mr. PETERSON. Yes, all during September.

Mr. CLINGER. And during that first week in October.

Mr. PETERSON. Right. And where it was interrupted, from my part, again, was when there were additional hearings at the DuPage Tower. And then I would drop back completely and I left, yes.

Mr. CLINGER. But, as far as you know, the process continued in your absence?

Mr. PETERSON. Yes.

Mr. CLINGER. With these revisions being made.

Did you ever have—did you ever have the sense that you were being asked to falsify records——

Mr. PETERSON. No. And the reason I say that is, you know, I did not take somebody's entry, you know, erase it completely or block over it or anything. You know, I felt that I had it in pencil. I took the entry, which was in ink, I wrote next to it in pencil and put, generally, one line through so you could see all of the changes.

Mr. CLINGER. And to your knowledge, the alterations that you made in the way that you have described were what ultimately ended up at the MSPB?

Mr. PETERSON. Yes. And I can remember—I do not remember the names, but I remember it stuck in my mind, because when the MSPB came up, you know, I had the feeling, "Well, you know, they think we are changing these things against," but I remember on several occasions changing it to the employee's benefit. And I do not remember the people's names or anything like that. So, I thought what I was doing was trying to provide accurate information to management on what happened to each individual during that period.

Mr. CLINGER. Okay. So, you did not have the sense that you were involved in any kind of cover-up at this time?

Mr. PETERSON. No, sir.

Mr. CLINGER. All right. When you worked as an oral reply official, it is my understanding, you showed the controllers copies of the records that were used to document their unauthorized absences. And, later, in the war room, it is clear that you were involved in an effort to alter many, if not most of those same records. Did you ever question the propriety of those later actions? In other words, were you——

Mr. PETERSON. No, I did not. I did 88 hearings—heard 88 replies and I was not really paying attention to the name, per se. I was trying to match up the schedule. And that could have very well happened. You know, I had the same people that I heard oral replies from, but I do not know that for a fact.

Mr. CLINGER. Might you, today, if you were to do it over, again, have some reservations about that?

Mr. PETERSON. I am not sure, to tell you the truth. I was not the deciding official on it. I did not make the decision to remove them.

Mr. CLINGER. You were not the deciding official?

Mr. PETERSON. I was not.

Mr. CLINGER. At the oral hearings, what was your—what disposition did you make and to whom did you refer your findings?

Mr. PETERSON. Well, I saw my role as an oral reply official as hearing any information, any mitigating circumstances, anything that the employee could bring up that would influence one way or another the deciding official's determination.

And the case that comes to mind, and I brought this up at the MSPB hearing and it stuck clearly in my mind, and I do not know why, but was the individual whose wife was having a baby, Mr. Rominstral, and his—he was—he told me that at the hearing.

And, see, what happened at the hearings was that a lot of the cases, the union person would read a statement and basically tell the person, "Don't say anything." And they would read the statement. Well, some did that and some did not do that.

In his case, he did that and that was one of the ones that I wrote up and I said, "This may have a bearing on why he was not at work." And, so, I would write that up. And I, generally, would not make recommendations one way or another: "This person should be removed."

What I would try to do is point out any information that if the deciding official decided that he wanted to go and investigate that further, he had at least the information at his fingertips to do that. So, it was not as clear-cut as he thought may have been. There are other circumstances that have come into this thing. And that is why my understanding was the purpose of the oral reply was: gather any information that could help the deciding official make the determination.

Mr. CLINGER. Given what I assume, you now know about the means by which the records contained in the second shipment of the controller files were created, would you agree that it cannot be said that those were records kept in the ordinary course of business which is what has been alleged?

Mr. PETERSON. I am not sure I understand, sir? The ordinary—you mean——

Mr. CLINGER. In the ordinary course of business would be entries made at the time of the event and so forth. It seemed to me that this was an extraordinary procedure and not really in the ordinary course of business.

Mr. PETERSON. Well, I would say so. I have to state that I really was not involved in working in a Center at all before and I had been in the Personnel Office and I do not know if I can comment on that accurately.

Mr. CLINGER. Yes. You were really not there during the normal course of the facility's operation. You were there at a very extraordinary high stress period.

Mr. PETERSON. Yes, sir.

Mr. CLINGER. Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you, Mr. Clinger.

Mr. Peterson, before I call on Congressman Rowland, I want to review an apparent inconsistency. In testimony by Mr. Miller, before the MSPB, Mr. Miller said that you, among others, used the signature stamp upon completing review of documents.

Mr. PETERSON. I do not——

Mr. OBERSTAR. You have just testified a moment ago in response to my question, you did not use the stamp, see the stamp or see anybody else use the stamp.

Mr. **Peterson**. That is correct. And I stand by that, sir. I do not remember any stamp at all.

Mr. **Oberstar**. The second point I would like to raise is that you said you changed annual leave to AWOL. What evidence was used in making that change?

Mr. **Peterson**. Mr. Miller's statement. If I found a discrepancy, I would write—if it did not match, you know, then what I would do is write it on a slip of paper and Mr. Miller would say, "Change it." or "Not change it."

Mr. **Oberstar**. But what evidence did you use—what evidence was available to you to recommend to Mr. Miller that annual leave be changed to AWOL?

Mr. **Peterson**. I do not recall. The only thing I could think of is that anybody during that period of time on annual leave, you know, would be questionable. It was my understanding that the annual leave was cancelled across the board. So, if you saw an annual leave situation, you know, you would say, "Was the person really on approved annual leave or not?" And I believe that is the approach I took. I am not certain of that, but in my mind, my thought process——

Mr. **Oberstar**. On a wholesale basis anyone that was scheduled for annual leave and, in fact, did not show up was then automatically considered to be AWOL?

Mr. **Peterson**. Well, I would like to point out one thing, too, is that I believe that Ray Cullerton next to me, when a situation would come up like that, he was familiar with the Center operation, he would go and talk to the supervisor, wherever they were on the floor, to see if that was an accurate situation. But I cannot fully recall my thought process at the time of how I made a determination like that when somebody was on annual leave versus——

Mr. **Oberstar**. Was there any preparation, any short course training before you undertook this work to prepare you to review these records and to make them consistent and complete?

Mr. **Peterson**. No, sir.

Mr. **Oberstar**. You were just given these documents to go through them, prepare sign-in logs, time and attendance and watch schedules and make sure that all reflected the same information; is that correct?

Mr. **Peterson**. Yes, sir.

[Counsel and witness confer.]

Mr. **Peterson**. They did sit me down, you know, and say, "This is what a sign-in log looks like and this is what a watch schedule looks like." I mean there was not any elaborate training course or any two-day or one-day course. It was a matter of, you know, "This is what the form looks like. This is the purpose of the form. And this is what the other form looks like." And that is all that I can recall. There was not any training process, per se.

Mr. **Oberstar**. Dr. Rowland.

Mr. **Rowland** of Georgia. Thank you, Mr. Chairman.

You stated your background was in personnel.

Mr. **Peterson**. Yes, sir.

Mr. **Rowland** of Georgia. Did you know Mr. Miller before you came back?

Mr. Peterson. I knew that he was at the Center, yes. I had met him several times.

Mr. Rowland of Georgia. Did you know him pretty well?

Mr. Peterson. I knew him to say "Hello" to.

Mr. Rowland of Georgia. Would you consider that you were on friendly terms with him?

Mr. Peterson. Yes.

Mr. Rowland of Georgia. You looked at the records, those inconsistencies. You wrote it on a piece of paper and sent it to Mr. Miller. And then he, in turn, would advise you in some type memorandum to make a change?

Mr. Peterson. Well, not in a memorandum. He would verbally say it or he would leave me a little scratch piece of paper with a note on it if he was going to be out of the office and everything, but it was not a formal process of memorandums.

Mr. Rowland of Georgia. And, in this informal manner, did you ever discuss with him why the changes were to be made?

Mr. Peterson. Not really. Again, I did not understand the operation of the Center. And, you know, I did not really discuss it with him.

Mr. Rowland of Georgia. Working in Personnel, if you amend a record, is it not customary to initial it or to give some indication as to who was making the change in case you needed to come back to it at some later time?

Mr. Peterson. In Personnel, in certain forms, you would do that. In others, more informal forms, you do not. So, I do not know how to answer your question other than, yes, there are many cases when you have to initial or sign for any type of revision and others that you do not necessarily have to.

Mr. Rowland of Georgia. In this type of change of where you were actually considering whether or not a person would be on annual leave or absent without leave, would that not be considered significant enough that you ought to make some kind of notation about the amendment so that it could be followed up in the future?

Mr. Peterson. Probably so.

Mr. Rowland of Georgia. In retrospect, would you have done that, now, if——

Mr. Peterson. I am not sure if I would have or not. If they had stated that, you know, "This is what you are supposed to do. Go make the change, initial the form and go down the line." I would have done that process. You know, I was not familiar with their process and I was trying to follow, you know, what I was supposed to do in the right way.

Mr. Rowland of Georgia. Actually, you were not to make any judgment calls yourself, it was just kind of a perfunctory thing that you did.

Mr. Peterson. Yes.

Mr. Rowland of Georgia. You were just an intermediary; would you say?

Mr. Peterson. I would say so. I think that they were trying to help me out. Again, I was trying to open my own business. And, you know, I needed the work. I had a family.

Mr. Rowland of Georgia. I see.

Mr. PETERSON. And I think you know, all the other individuals were retired, all the hearing officials, and I was the youngest one. And the feeling I had was, "Well, Pete, if you want some additional work, you know, you can come over here at the Center and work on some additional work." I had just left the Cuban-Haitian at Fort McCoy with HHS, and my job had ended up there. So, I took, I took the work. And I had the feeling they were doing that to help me have some temporary work. They could have just as well probably gotten someone else, you know, another controller or——

Mr. ROWLAND of Georgia. I see. So, you feel that you really were brought back just to be of assistance to you?

Mr. PETERSON. Partially to me, at least in the war room. The oral replies, I was a second level manager and I had skills in interviewing techniques and, you know, I felt I was fair and impartial my whole time that I had been there. And maybe that is one of the reasons—well, I do not know why they got me back, but that is what I feel.

Mr. ROWLAND of Georgia. Did you interview any of these controllers whose records had been changed?

Mr. PETERSON. I may have. I do not recall.

Mr. ROWLAND of Georgia. It seems to me that probably, if someone's record had been changed, they would be pretty upset about that. Do you recall interviewing any of those who were upset about their records being changed?

Mr. PETERSON. I do not recall, no.

Mr. ROWLAND of Georgia. Well, you do not recall anybody being upset with you, then?

Mr. PETERSON. No, just at the oral replies. That was——

Mr. ROWLAND of Georgia. That is what I am talking about, though.

Mr. PETERSON. Oh, everyone was upset—I do not know if I structured that right, but they were—they would come in in shorts and tee-shirts and yell at me. You know, and call me things, like, "You're just a lampshade and do not really have any purpose here."

And I would try to wait until they would calm down. And they tape recorded me. And I was trying to explain to them as carefully as I could that my job was to try to get any information that could sway one way or another the deciding official's decision on a proposed action to remove them.

And, all in all, you know, some cooperated very well and wanted to provide information and others just did not.

Mr. ROWLAND of Georgia. You were doing two functions, then. One function was to charge inconsistencies in the record and another function was then to have oral interviews with the controllers. Is that right?

Mr. PETERSON. Well, my main job that I saw was the oral replies. And I had received a letter from Mr. Gunter saying that I was authorized to hear the oral replies. That is what I saw as my main job. And then after that period of time was up, then, you know, they said, "would you like to come over and continue employment for a couple of more weeks."

Mr. ROWLAND of Georgia. I see.

Mr. PETERSON. And I said, "Yes, I wanted to."

Mr. **Rowland** of Georgia. So, then you did the record——

Mr. **Peterson**. The records——

Mr. **Rowland** of Georgia [continuing]. Amendments as a second part of the——

Mr. **Peterson**. Yes.

Mr. **Rowland** of Georgia. I see.

Mr. **Peterson**. And then as a third part, there were still some leftover hearings that took place at DuPage Towers. And, so, when they came up, I went back into that role, again, of listening to the oral reply.

Mr. **Rowland** of Georgia. Some of these records, the second shipment of records took place even on into November, according to the information that we have. But you left there the first part of October. You were not there during October.

Mr. **Peterson**. No, sir.

Mr. **Rowland** of Georgia. So, you would not have any knowledge about whether or not there continued to be changes and records amended after, say, the first week in October?

Mr. **Peterson**. First week, week and a half, yes, sir; that is right.

Mr. **Rowland** of Georgia. Thank you, Mr. Chairman.

Mr. **Oberstar**. In that period of time that you were working—went back to work for the FAA, was that as an FAA employee or as a contractor with FAA? What was your relationship?

Mr. **Peterson**. It was a contract with FAA for temporary employment.

Mr. **Oberstar**. I see. How long did—total period of time—did you work for the FAA?

Mr. **Peterson**. I think it was two and a half months. August to September—approximately two months. Two months and a week.

Mr. **Oberstar**. Your employment began in August?

Mr. **Peterson**. Yes, I believe it was early August.

Mr. **Oberstar**. Shortly after the strike? Immediately after the strike?

Mr. **Peterson**. I am trying to recall. I think it was the 3rd or 4th of August. Something like that.

Mr. **Oberstar**. That would have been right after, the day after the strike you were called back?

Mr. **Peterson**. Okay. Then it had to be later than that because they had to take time—when I—I am trying to recall when the oral replies started. I am not really sure. It was early August.

Mr. **Oberstar**. Well, the first oral reply hearing that we know about was August 14th.

Mr. **Peterson**. Okay. Then I was——

Mr. **Oberstar**. Were you working at that time?

Mr. **Peterson**. Yes. I had been on board probably several days before they started because they already had the group collected at the Aurora Hilton when I came there. So, I think it was, you know, several days before that.

Mr. **Oberstar**. I am not trying to trip you up or anything. I am just trying to get the record accurate. You said that you worked roughly two and a half months. So, if you started mid-August, right around the 14th, that would put you to September 14th, October 14th, maybe to the end of October.

Mr. PETERSON. Well, then I am wrong then. I apologize. It was, it was about probably approximately the 10th or 11th of August onto the first, possibly the second week of October. So, that is really——

Mr. OBERSTAR. Then you terminated your employ with FAA in this capacity——

Mr. PETERSON. Yes.

Mr. OBERSTAR [continuing]. Roughly around the end of the first week of October.

Mr. PETERSON. Yes.

Mr. OBERSTAR. Then what did you do?

Mr. PETERSON. I opened my own business, a small restaurant in Chicago.

Mr. OBERSTAR. I see. I have another question. Can counsel verify those employment—do you have FAA records that you can submit for the hearing record?

Mr. RANDALL. We will certainly check.

Mr. OBERSTAR. At a later date. Not now, but you will supply them.

Mr. KUPIETZ. Yes, Mr. Chairman, we will check.

[The information requested was not received by the Subcommittee at time of publishing.]

Mr. OBERSTAR. Thank you. We can verify this at a later time.

You indicated that on occasion you changed records to the employee's benefit. Was that in the oral reply? Was that in your review of records?

Mr. PETERSON. In my review of records, where I think that I put one down where—I cannot remember the names—but I put one down, I remember, from AWOL to annual leave, for instance. And to me that was, you know, in my mind, considered a benefit to the employee.

Mr. OBERSTAR. In the oral reply capacity, you confronted controllers directly.

Mr. PETERSON. Yes, sir.

Mr. OBERSTAR. You showed them documents, records, You asked them for evidence to sustain their argument that they were improperly terminated; is that correct?

Mr. PETERSON. Yes. Any information that would bear on the situation that they could provide.

Mr. OBERSTAR. Did you have occasion in reviewing records in October to come back and see records of controllers that you had confronted in the oral reply phase?

Mr. PETERSON. I do not recall at all, sir. I do not know. It may have been possible, but I do not recall at all whether or not I had reviewed any going back or not.

Mr. OBERSTAR. Is it not somewhat curious that there should be an oral reply period and after that is concluded that then controller records would be reviewed and modified?

Mr. PETERSON. Yes, it was—they were very hectic times, though, at the time. So, I cannot justify it one way or another.

Mr. OBERSTAR. Did it strike you then or does it strike you now as somewhat of an infringement upon the rights of those controllers to have unaltered records that process should take place, that there should be a hearing and then records apparently used in that hearing modified later on?

Mr. PETERSON. That is right. The one thing I would like to point out is that, you know, the important thing to me was that the records painted a picture as accurately as possible because pursaunt to those oral replies and to an adverse action taking place, there were a series of MSPB hearings where the evidence could be brought out and I think it would be to the best advantage of everyone to have an accurate depiction of what occurred at the time. And there were a series of MSPB hearings.

Mr. OBERSTAR. Yes, quite clear.

Counsel, do you have follow-up questions?

Mr. IMUS. Yes, just a couple.

Do you remember working in the war room with a woman by the name of Marsha Wiest?

Mr. PETERSON. Subsequent to that and when I went to an MSPB meeting, you know, it was brought up about Marsha Wiest. And I just do not recall her being in there. She probably was in and out. Again, I was facing the wall.

Mr. IMUS. Do you remember Marsha Weist? Would you know her? Did you remember meeting her?

Mr. PETERSON. No, I do not remember meeting her at all.

Mr. IMUS. After you made the change on the sign-in log, after Bob Miller gave his permission, what did you do with that log at that point?

Mr. PETERSON. What would I do with it? Do you mean after I marked on it?

Mr. IMUS. Yes.

Mr. PETERSON. I am not sure. I think I would go on to the next employee or the next case or person. I am not sure.

Mr. IMUS. Is it true that once making the change in the log, a change had to be made on the time and attendance sheet?

Mr. PETERSON. I would suspect that is ultimately what the goal was. I did not make any changes on time and attendance sheets. But that would be the ultimate, you know——

Mr. IMUS. Would you alert the time and attendance clerk to a change you made in the log and bring it to her attention?

Mr. PETERSON. No. I would put the completed forms on the table behind me and start work on the next one.

Mr. IMUS. Then who would pick up those forms?

Mr. PETERSON. Bob Miller would pick them up and pull them all together.

Mr. IMUS. Did you and Mr. Cullerton work in the war room side by side together?

Mr. PETERSON. Yes. He was on my left, my immediate left.

Mr. IMUS. Was there ever a point when he remained working in the war room and you left?

Mr. PETERSON. I do not know that for sure. I am not sure.

Mr. IMUS. I am trying to get what was actually your last day in the war room. Did you just walk away in the middle of a job or was the work in the war room completed at that time?

Mr. PETERSON. Well, I felt it was, for my part, you know, had gone through each employee's thing and my part was completed. I mean I am not really—I felt it was completed, you know, at least the parts that I was working on. I did not really have the big picture, so, I do not know if there were other things going on or not. But, as far as my part, I felt it was completed.

Mr. **Imus**. How about Mr. Cullerton's part? Did your know whether or not Cullerton would be back working when you would not be working?

Mr. **Peterson**. No, I did not know if he would or not.

Mr. **Imus**. Bob Miller had testified that the war room broke up in early November. I am just trying to get the idea of the manpower that would have been left to operate the war room.

Mr. **Peterson**. I am not sure. There was a lot of paper all over the place. There were two big tables pushed together in the center because we ran out of space. There was a Xerox machine stuffed in there and there was one in the hallway. It was very crowded is what I remember. We were lined up against, basically, on a table facing the wall. And it was just a real crowded small——

Mr. **Imus**. Did you review every sign-in log?

Mr. **Peterson**. I do not know.

Mr. **Imus**. Or every controller's file? How did you know when your work was done in the war room?

Mr. **Peterson**. Well, basically, you know, if it was Ray Cullerton or if it was Bob Miller would give me another stack, you know, and I would go through them. And when the stack was done, you know, they were sort of wrapping things up, I felt. They said, "That is all we have to do for now." And I thought that the process was complete at that point.

Mr. **Imus**. Was there any other individual doing your job?

Mr. **Peterson**. Well, I think Clyde Campbell was doing the same thing. He was way up against the wall and he did not talk very much, you know. I presumed he was doing the same thing I was doing, you know, going through the records.

Mr. **Imus**. Was he getting approval from Mr. Miller to make—I mean did he follow the same procedure you followed, which was to request approval of Mr. Miller to make the change?

Mr. **Peterson**. I do not know how he proceeded. He had the air traffic background and he was at the Center. He may have known what the situation was. I do not know the answer to that.

Mr. **Imus**. Mr. Peterson, I am a little bit confused. You stated that you left the war room in October, in mid-October, but the War Room operated until November and you stated that as far as you could tell that your part of the review was complete, I am just wondering what would they have done for the next two and a half weeks.

Mr. **Peterson**. I do not know. I am not really sure that they would have done.

Mr. **Imus**. Was the T&A clerk down there when you were working there? Marsha Devinere?

Mr. **Peterson**. No. I believe that, you know, Marsha—I referred to Marsha had an office upstairs. And I did not see her when I was there.

Mr. **Imus**. Okay, you talked about a period of time where you worked in the war room, then you had to go back to hearings at DuPage. When you returned to the war room, how long did you stay?

Mr. **Peterson**. It did not seem like it was that long. It seemed like things were wrapped up. You know, I had finished a second set of hearings and that was it.

Mr. **Imus**. Okay. So, your work was pretty much over with, then?

Mr. **Peterson**. As far as I was—you know, as far as I understood, yes.

Mr. **Imus**. The review of the logs that you described, was that done before you went to DuPage?

Mr. **Peterson**. Yes.

Mr. **Imus**. So, now, we are talking about September.

Mr. **Peterson**. Yes.

Mr. **Imus**. Because the DuPage hearings were at the end of September.

Mr. **Peterson**. Yes. Or early October, I think.

Mr. **Imus**. So, what we have now is a situation where the war room continued to operate for now a month and—actually, about six weeks. And, as far as you could tell, your work was done?

Mr. **Peterson**. Yes.

Mr. **Imus**. I do not have anything further.

Mr. **Clinger**. Let me just clarify.

Mr. **Oberstar**. Mr. Clinger.

Mr. **Clinger**. Did you go back to the war room after the DuPage hearings?

Mr. **Peterson**. It seems like I did for several days and sort of cleaned up, you know, papers.

Mr. **Clinger**. I mean were you still going through the review of individual files?

Mr. **Peterson**. I do not recall doing it them. It seemed to my mind that the last, you know, I may have. I do not remember, but—all I remember is that after the DuPage hearings that that was basically it for me. You know, my time was up.

Mr. **Clinger**. But you did go back to the war room and were there for, what do you think? Two days? Three days?

Mr. **Peterson**. Possibly two or three days, I think. I canot recall, to tell you the truth, but it was not a long period of time. That is what stays in mind.

Mr. **Oberstar**. Is that scenario, then following up on Mr. Clinger, August-September at the war room—I mean the oral reply hearing and then the DuPage hearing and then back to the war room?

Mr. **Peterson**. Back to the war room for several days, I think it was.

Mr. **Oberstar**. And then termination?

Mr. **Peterson**. Yes.

Mr. **Oberstar**. Mr. Goebel?

Mr. **Goebel**. Only one other line of questioning, Mr. Chairman. And that is, Mr. Peterson, during your time in the war room, Beverly Miller was also working there. Were you in any way aware of what she was doing at the time?

Mr. **Peterson**. What I can recall that she was doing, and, again, she was to my back, that, you know they had two big long tables pushed together in the center of the room. Big, you know, long tables. And she had, you know, stacks of papers. And at times, I think she was Xeroxing and I think putting folders together. And, you know, administrative things like that. That is what I recall in my mind.

Mr. **Goebel**. I want to show you the documents that are in the subcommittee's possession, which are, for purposes of identification, a war room listing of controller files and sort of a score card keeping track of certain significant events as they unfolded during the remvoval process for each controller, purported to have been prepared by Beverly Miller, as we understand it, and containing dates in the left-hand margin. Some dates are recorded in red pen. Some dates are recorded in green pen. I ask you to just take a look at it for a minute and see if it is anything that you recognize.

[Pause.]

Mr. **Peterson**. I do not recognize this at all.

Mr. **Goebel**. You never saw it in the war room or were aware of anyone working on it?

Mr. **Peterson**. No.

Mr. **Goebel**. Do you have any idea what those dates in the left-hand margin might refer to?

Mr. **Peterson**. No.

Mr. **Oberstar**. One last question, Mr. Peterson, and I ask because you are unclear or uncertain about certain times, beginnings and endings of times are fuzzy. Is there any possibility you worked in the war room through October to the end of October? Off and on? From time to time—a day here and a day there? Or any continuous period of time?

Mr. **Peterson**. I may have. I do not believe so. I did not sporadically, that I can recall, go in, stay home. You know, come in a day. I think that, you know, I may have but I do not recall that. I think it was a pretty traumatic time in my life. I had quit my job. I had gotten—I was trying to settle into something new.

Mr. **Oberstar**. It was a pretty traumatic time nationally, too; was it not?

Mr. **Peterson**. Yes, it was.

Mr. **Oberstar**. Massive firing of the air controllers. Massive dislocation in the air system. What you were involved with here was just one part of a nationwide picture but part of a very important upheaval in the nation's air traffic system and not an inconsequential period of time. So, what you were involved with was a pretty major undertaking. Events in which you participated are the kinds of events that tend to stand out in one's mind.

Congressman Rowland?

Mr. **Rowland** of Georgia. I want to get something clear in my mind. I know this has been several years ago, but when I was questioning you earlier about the amending of the records, I got the feeling that you did it objectively because you looked and you saw the inconsistencies and you passed a note along that were inconsistencies there and then through some discussion, you changed and amended the records in accordance with what Mr. Miller wanted done. But then when you were answering a question from Chairman Oberstar a few moments ago, you said that it was important to you that the records paint as accurate a picture as possible. And from that standpoint, that seems to be subjective.

I get two feelings from you: one that you were just perfunctorily making the changes and the other one that you were really involved in how the changes were going to be affecting people.

Mr. PETERSON. Maybe I misrepresented myself. I feel basically I wanted to do a good job, whatever I had done. And I do not want to give you the impression that I was just a sluggard in there and just did not really care about anything. I mean I care, you know.

Mr. ROWLAND of Georgia. Yes.

Mr. PETERSON. And I wanted to do a professional job, if I could. And I do not know if I misled you on how I felt, I apologize on that. But I wanted to have what I did, I wanted to do it right, just as I wanted to do the oral replies right.

Mr. ROWLAND of Georgia. Yes. Okay. So, then the changes that were made were made on Mr. Miller's recommendation, but they really concerned you insofar as your job performance was concerned and not how they affected the controllers?

Mr. PETERSON. That is probably accurate. I probably was not looking at the big picture at the time.

Mr. ROWLAND of Georgia. Thank you, Mr. Chairman.

Mr. OBERSTAR. Congressman Clinger?

Mr. CLINGER. Just one other comment. Mr. Randall, you have indicated that there would be some record that would show when Mr. Peterson was employed, a period of time when he would be employed. And I guess you are going to provide that for our record.

Mr. RANDALL. Yes, sir. If that exists, we will find it. It has been a long period of time and sometimes records are disposed of, sometimes sent to the Records Center, but we will certainly look.

[The information requested was not received at time of publishing.]

Mr. CLINGER. Would that normally reflect the times that he was working as an oral reply person and when he might have been working in the war room?

Mr. RANDALL. That, I do not know. I do not know if they would have kept a kind of a standard time and attendance record on him or not since he apparently was on contract at that time. We will look to see what we have and try to pin it down as well as we can for you.

Mr. CLINGER. Thank you.

Mr. OBERSTAR. In any event, your testimony, Mr. Peterson, is that your last work for the FAA at that period of time was in the war room.

Mr. PETERSON. Yes.

Mr. OBERSTAR. And either through and conclusively ending the end of the first week of October or possibly some additional days in October. That is what you testified to?

Mr. PETERSON. That is what I believe, yes. Yes.

Mr. OBERSTAR. Thank you, Mr. Peterson. Thank you for appearing.

Our next witness is Mr. Miller.

[Witness sworn.]

Mr. RANDALL. Mr. Chairman, with your permission, Mr. Miller has a short prepared statement that he would like to read to the subcommittee to try to put things into context.

Mr. Oberstar. He is certainly welcome to present the statement. It is, I must note again for the record, it is part of the committee requirement that any written statement be submitted 48 hours in advance of the committee hearing. We have relaxed this occasionally for agencies. But, with that understanding, that this is a deviation from our customary proceedings, we may proceed.

TESTIMONY OF ROBERT L. MILLER, FEDERAL AVIATION ADMINISTRATION

Mr. Miller. I apologize for that, Mr. Chairman.

Mr. Chairman and members of the subcommittee, with your permission, Mr. Chairman, I would appreciate the opportunity of making a brief statement to the subcommittee.

I believe it is important for the subcommittee to understand that I sincerely regret the need for today's hearing. Since the subcommittee's hearing last March, I have had the opportunity to review my testimony at that hearing and to compare it with my earlier statements in a hearing before the Merit Systems Protection Board and in an associated deposition. Clearly, there are inconsistencies in that testimony and I can fully appreciate your interest in seeking to harmonize those statements so that you can proceed to a committee report.

You have my assurance that I will do all in my power to cooperate fully with you and to respond as directly and accurately as I can to your questions. I also want to stress to you that at that—at no time over the past six years have I intentionally sought to mislead or be untruthful to anyone who has questioned me on the occurences which took place in 1981.

What is difficult, though, Mr. Chairman, is to reconstruct events which occurred many years ago during an extraordinarily demanding and difficult time for any of us associated with the operation of the Air Traffic Control System. I and others spent many hours, often going far beyond the normal work week, working in areas that were new to us and where, very candidly as I acknowledged last March, we made a number of mistakes in processing of cases.

Although I have spent considerable time, because of the serious nature of the subcommittee's investigation, seeking to recall specific events associated with use of the signature stamp in the war room and with a second shipment of records to the regional office. It has proven very difficult to do. Part of this difficulty is because of the passage of time. Part, no doubt, is because the strike represented a very troubling and stressful and hectic time for all of us in the F.A.A. And, last, I have called into doubt my own recollections of some of these events because of the testimony of others whose recollections have differed from mine.

What I want to assure you today, however, is that I am trying my best, as I have before, to be straightforward and truthful with you. I am not sure that I can explain to your complete satisfaction today exactly what happened before, but I would like to leave this hearing room today feeling that the subcommittee at least believes they have heard from an honest man who is doing his best to be responsive to their concerns.

I would like to briefly touch on the issue of the second shipment of documents. I had indicated in prior testimony that I recalled having been asked at the Center to reproduce multiple copies of adverse action files. I have reviewed my earlier Merit Systems Protection Board transcript which confirms that I earlier testified to that same point.

In my testimony, I noted that the Center had stopped reproducing multiple copies when the task became too great. I also indicated in my recollection that a second shipment of documents had been transmitted to the Regional office, although I could not specifically recall how the requirements to ship a second set was made. I continued to believe that at one point the Center was asked to make multiple copies of adverse action files for the Region, but that this effort was abandoned. I also believed that a second set of files was shipped to the Region. Although I am not sure as to what the impetus for this second set of files was, I have a general recollection that it was to assure that the Region had a complete, accurate and up to date file on the terminated controllers.

Some confusion in preparing files had occurred in the initial duplication of multiple files and the preparation of a new set of documents cured this problem as well as bringing the records up to date with the latest and most accurate sign-in logs and time and attendance records.

It may have been a decision made in the Center or the Region to ship the second set of records, but my recollection is not specific on this point.

The issue of the signature stamp remains unclear to me, even though I have given it considerable thought and discussed the matter with others. I will try to reconstruct for you as best I can what took place, although my recollection is not something that I can clearly attest to.

I continue to believe that I asked others in the war room to use my signature stamp to signify the completion of the review of the log, although no one can recall my having given such directions. I would add that there have been no—there would have been no reason for me to use my own signature stamp since I could easily have annotated my own signature on a record which presumably would afford even greater weight to the document had that been the intent of affixing a signature.

I testified in March that I had found my signature stamp in the desk in the war room when we were disbanding the war room. That is not correct. Having considered this matter at greater length, I believe it accurate that I found the stamp in the desk in the war room either in September or early October when we were rearranging furniture to give us more table space. This took place relatively contemporaneously with George Gunter having completed his review of controller files and during the time Pete Peterson was still working in the war room, since he recalls the desk being moved out of the room.

I took the stamp home and destroyed it. I also learned from my wife that she had a different signature stamp at home. The next day I checked with my secretary, Marge Elliott, and learned that she also had a signature stamp of mine.

My recollection is that I took it from her, but I learned from her that there were legitimate reasons for having this stamp. I, therefore, did not destroy that stamp. Instead, it must have been in this relative time frame that I made the signature stamp available for use in the war room. I cannot explain why others did not recall that I indicated that it should be used to signify the completion of review of a given log. I have no reason to doubt any of their words on this issue. Unfortunately, I am unable to put this issue into a more specific context. I assure you that I wish that I could. If it is of any use to the subcommittee, I have brought with me, today, copies of my personal signature stamps from home and from the office. The subcommittee is welcome to use these stamps in whatever way might prove useful in its investigation.

In closing, Mr. Chairman, I would like to reiterate that I understand your concerns over these issues and that I will cooperate fully with you in seeking to resolve them.

Mr. OBERSTAR. Thank you, Mr. Miller. I assure you, as I said at the opening of this hearing, and as I pointed out in the session we had in the subcommittee offices in Washington, we are just trying to get at the truth. As was your stated purpose in reviewing controller records, to make them complete and accurate, we are trying to make this record complete and accurate. We are not setting any traps. We said in the course of staff interviews, in the course of the session we had in the committee offices, that there were inconsistencies. We pointed them out to you, told you we would give you an opportunity to clarify those inconsistencies at an exective session we are now holding. We have been totally fair, totally straightforward with you and with all of the other people involved in this. And I think you understand that.

Let's focus then on one of these inconsistencies. During your March 11th testimony at the subcommittee hearing, you said that a list, which we identified as Exhibit 13, entitled, "Packages to Regional Office," represented a second shipment of five additional copies of controller files which were first sent from the Chicago Office to the Great Lakes Region Office in the period September 14 to October 1.

Then, in a subsequent interview with subcommittee staff and having had time to further reflect on it, you changed that statement and said that the list represented a second shipment of complete records.

So, let us go back now and clarify—give you the opportunity to clarify what was contained in the package identified in Exhibit 13.[1] And that is right there on the table, that list.

[Pause.]

Mr. MILLER. I believe, Mr. Chairman, this was the completed updated list that was sent with the corrections that were not included in the first shipment.

Mr. OBERSTAR. All right. So there, in fact, was a second shipment.

Mr. MILLER. Yes, sir.

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[1] See exhibit 13, p. 324.

Mr. **Oberstar**. Apart from your opening statement, could you just in your own words, again, say why you gave us an account in March that is at variance with the statement you just made now?

Mr. **Miller**. An account of why the list is there, Mr. Chairman?

Mr. **Oberstar**. Why, in March did you say there was only one shipment, and now you have verified that there are, in fact, two. Is that simply your lapse in memory?

Mr. **Miller**. I do not recall. I did not—I do not recall having denied two shipments. I did not recall until they showed me the list of the two separate shipments, but I believe at the time that I associated it with the fact that we tried to produce multiple copies for the Region and that this had compounded our problems, both in putting the documents together and in getting all the materials into the documents and that with the amended T&As and so forth, that the second shipment was to make sure that they had a complete and accurate set of documents and a single set of documents.

Mr. **Oberstar**. You told the subcommittee staff that so far as you knew the first shipment of controller files contained records that were accurate. That was your statement to subcommittee staff.

Mr. **Miller**. Yes, sir.

Mr. **Oberstar**. When did you make a determination or have an indication that the records were not accurate, were inconsistent and needed updating, as you put it, to be made complete and up to date, as I noted from your prepared statement?

Mr. **Miller**. I am not sure I made that determination alone, but I believe that when it was determined that records, a complete singularly set of documents should be sent was the stimulus for it and I do not recall how this occurred, whether it was on telecon or whether it was by a specific direction. I do not have a clear recollection of what stimulated the second shipment, itself.

Mr. **Oberstar**. That is something I wanted to get closer to and that is the fact that you did not take it upon yourself. How did that determination come about? There is a gray area here. Let us try to clarify the gray to the extent that we can.

You would not have undertaken that second effort on your own since you had already reviewed these records, you and the staff working with you, Mr. Peterson, Cullerton and others. So far as you knew that first effort, continuing through September, was your best effort to update those records and make them complete and make them accurate, so they were shipped up to Chicago.

Now, there was a second effort and a second shipment of documents. In that period of time from the end of the first shipment to resuming the review of controller records, what occurred? What conversations did you have either by phone or in person or what directives did you receive, if any, in writing and from whom? This is not something you, as part of the Center would undertake. Would Mr. Gunter have directed you? Would someone in Region have indicated to you that, "More work is needed on these records. They are not completed."

Mr. **Miller**. Yes, sir, Mr. Chairman. I do not have a clear recollection of what the stimulus was to produce the second set. We were making amendments requests from the Regional office from Labor Relations and from Air Traffic were being forwarded to send additional information where that was missing and complete documents that were not complete that had been sent up. And there was, I bleieve, some compounding of the problem by the multiple documents that we had tried to make. And I believe this could have caused some of the inconsistencies. I do not know what the stimulus was, per se. I do not recall, sir.

Mr. **Oberstar**. Well, apart from the matter of the substance and the inconsistencies and whether they were complete or incomplete, what I am trying to get at is where did the stimulus come from? Who did you talk with on a regular basis as you were going through this review process in the Regional Office?

Mr. **Miller**. We talked daily on telecons with Air Traffic Branch, which would have been 500.

Mr. **Oberstar**. Yes, but who? Who in there?

Mr. **Miller**. This, sir, would vary with whoever was on duty at the time. We had telecons during the day and the evening. We were running two shifts on an ongoing basis trying to get the administrative work accomplished. And I talked with the labor relations branch and with the legal branch, also.

Mr. **Oberstar**. Did you talk to Mr. Shewfelt during that period of time?

Mr. **Miller**. I do not recall a specific conversation with him, but I am sure he was on some of the telecons, yes, sir. And Mr. Yokley was one that also was the specialist that I believe—I believe he was the focal for the Chicago documents.

[Counsel and witness confer.]

Mr. **Miller**. I am sorry, sir. Telecon is a telephone communications patch that is set up between the regional office and facilities. Telecon being the communications which——

Mr. **Oberstar**. Does that mean a live voice conversation or is that a written communication over a telephone?

Mr. **Miller**. A telephone, sir. They would have a speaker phone and you would have multiple entities in the room where you may have Air Traffic Branch and Legal and Labor Relations.

Mr. **Oberstar**. I see. So, on the other end of the line, you might have several people involved either in one room——

Mr. **Miller**. Yes, that is true.

Mr. **Oberstar**. And some of those voices—did I hear counsel suggest some of the voices you might not be able to identify?

Mr. **Miller**. That could be true, also. You were not always aware—generally, at the start of the telecon, the regional office would give the names of the branches that were present so you would know who was there. And on some occasions, they did give the specific individuals.

Mr. **Randall**. Mr. Chairman, the point I guess——

Mr. **Oberstar**. Yes.

Mr. **Randall** [continuing]. That I thought was important to make was that Mr. Miller was not necessarily recalling specific conversations that he had personally had with Mr. Shewfelt, but that perhaps in a group kind of setting with the telecons where there might even be unidentified on the other end of the line, there may have been some communications but not necessarily Bob Miller calling up Dick Shewfelt to ask his advice on a personal issue.

Mr. **Oberstar**. Did there occur at any identifiable point in time in your memory time in which an order was given, a directive given in however casual a manner that the records submitted so far were not complete not accurate, and need to be redone?

Mr. **Miller**. I do not recall a specific time or order, but I had assumed that this was the stimulus for—the request had come via telecon request or a telephone conversation. As you said, it could have come from Mr. Gunter, but, generally, the requests were made on telecons and I tried to attend most of the telecons about the personnel records.

Mr. **Oberstar**. Well, our records show that the second shipment of documents to the Great Lakes office began just two weeks after the last box of the first shipment was sent. That is what we have been able to discern pouring through these documents.

Now, mind you, we have—committee members and staff—looked at thousands of papers. You and the others in the room worked on those papers. That was a big job. We have had testimony and statements from others what a big job this was, time consuming, demanding, long hours, a lot of paperwork, checking and cross-checking, so overwhelming that at—in your testimony at the MSPB hearing you said, "We did not have the manpower to Xerox all this. We just shipped them up to the Region and said: You copy all the ones, make the extra copies that you need."

It seems logical in the ordinary course of human events that after you have completed such a massive undertaking that you would recall clearly at what point there occurred the decision or was given an order to begin this whole process all over, again.

Mr. **Miller**. I do not have a specific recollection of that, also, Mr. Chairman.

Mr. **Oberstar**. You know, I recall during the testimony in March how you remembered very clearly, when we raised the question of discrepancy about your own time and attendance record, discrepancy between the time and attendance sheet and the front door log. And you recalled very clearly that this involved leaving the Center, going home, changing your shirt. And you even gave us close to the exact time it took you to do all that. If you could remember a detail like that, I find it hard to understand that you cannot recall some momentous decision: Who gave an order to begin anew this process of reviewing these records?

Mr. **Miller**. No disrespect, sir, but going through the gate was a momentous task each time, when you had stuff thrown at you and were being called all kinds of names. Sometimes that impressed you more than the logistics of doing the job. But I do not recall the specific direction to reinitiate the documents, no, sir.

Mr. **Oberstar**. I can certainly understand the pain of crossing the picket line and the feelings that were so evident and so very, very deep at that point. Now, we are sometime removed from the picket line and, let me put the question another way. Were officials in the regional office involved either in the telecons that you had or in some other way in directing a second set of documents being submitted?

Mr. **Miller**. I do not recall the specific time that it was directed then.

Mr. OBERSTAR. Not the time. I am asking whether, whether officials in the regional office were involved in this decision to go ahead with a second set of documents.

Mr. MILLER. I do not recall the specific decision, when it was made or who was present to make the decision.

Mr. OBERSTAR. Were you talking with people other than those in the regional office during the time of reviewing these records in the first period of review? You were only talking to the regional office, as I understand from all the testimony you have given.

Mr. MILLER. Generally, that's true, yes, sir. When you say other people, we were talking with the Department of Justice, trying to get injunctions. We were talking with the Mayor trying to get the firemen to stop hosing us down as we went by. We were talking with a lot of people: with judges to get temporary injunctions because of property lines. So, I was dealing with many people, sir.

Mr. OBERSTAR. Well, let me be more precise. When you are discussing records—I was not aware of all those other conversations and I appreciate the fact that you were involved in a wide range of things. It is helpful for us to understand the picture of events as they unfolded. But, so far as records are concerned, did you talk to any F.A.A. personnel other than the Regional Office about these records?

Mr. MILLER. Not that I can recall. The conversations dealing with the records were done basically with Air Traffic and Labor Relations and Legal.

Mr. OBERSTAR. Is it fair to say, then, that there was either a collective judgment, that is, between you, as head of the war room operation, and the Regional office staff to resume the correction of records?

Mr. MILLER. I believe that could be, yes, sir. I do not know who specifically was involved in whatever conversation it was that stimulated it.

Mr. OBERSTAR. If, in your judgment, as you have stated to committee and subcommittee staff, the first shipment of records were complete and accurate, and you would not have initiated on your own a second review of records and a second shipment of records, somebody, as you have said already, somebody other than you initiated that, but you cannot recall at all who or in what circumstances?

Mr. MILLER. No, sir, I do not.

Mr. OBERSTAR. Mr. Clinger,

Mr. CLINGER. Thank you, Mr. Chairman.

Mr. Miller, you said that you had almost daily telecons with people at the regional office during—I gather during the entire period of this whole exercise. That would have been, presumably, you would have had—those telecons would continue after completion of the first shipment and up to the point where the second shipment was started.

Mr. MILLER. Yes, sir.

Mr. CLINGER. Is that correct?

Mr. MILLER. That is true.

Mr. CLINGER. Let me just give you a scenario that during these telephone conferences, you were receiving complaints from people at the regional office about the incompleteness or inaccuracy, inconsistencies or whatever about individual files. Is it possible that there were complaints lodged with you about the adequacy of the files that you were sending to them or that you had sent to them in the first shipment?

Mr. MILLER. I believe there were phone calls, sir, that were generated to ask for additional information, yes, by labor relations specialists and by air traffic specialists, yes.

Mr. CLINGER. But during the telephone conferences that you had, were there discussions during those conferences about, you know, the completeness and adequacy of the files that you had prepared and sent to them?

Mr. MILLER. There could have been. I do not recall any specific ones, sir. There were both kinds. I am sorry. We had both types of telecons, multi-facility ones. We had weekly ones that were assigned and I do not recall the exact times. I think it was Monday, Wednesday, and Friday, with all the other centers. And then we had telecons with various branches during the day and evening shift. They had duty officers or duty personnel assigned to the various offices.

Mr. CLINGER. Now, you indicated that you were present at all of these telecons or most of them?

Mr. MILLER. I tried to attend as many as possible, yes. The secretary would notify me when there was a telecon.

Mr. CLINGER. And would there be, from the regional office, who were the regular participants in the telecons? Was Mr. Shewfelt, for example, a regular participant?

Mr. MILLER. I believe he was on many of the telecons. I would not even hazard a guess to how, what percentage. But I do not know——

Mr. CLINGER. He was fairly regular, was he not?

Mr. MILLER. Yes, I believe he was there or some of the specialists from the branch would be there.

Mr. CLINGER. And how about Mr. Walker?

Mr. MILLER. Yes, Mr. Walker was on many of the telecons, also.

Mr. CLINGER. But you do not recall any discussions during those telephone conferences about the adequacy or the completeness of the first shipment?

Mr. MILLER. I do not recall any specifics. There could have been questions and I do not recall any of the specific ones on those, sir.

Mr. RANDALL. Mr. Clinger, if I may interject for a moment.

Mr. CLINGER. Yes.

Mr. RANDALL. I would—again, I was not there. I am only engaging in speculation, which I probably ought not to do, but I will do it anyway. And my speculation is that in a multi-facility telecon, which might include a number of centers and perhaps some other facilities, probably not likely that the regional folks would pick on an individual facility to point out shortcomings in what was done. I would gather that it is probably more likely that if there were some problems with the records at the Chicago Center, that it might have been done by a labor relations specialist in a private phone call to the Center indicating that, "We are not finding enough consistent logs in here." Or whatever the difficulty might be.

But typically, because we have a lot of headquarters telecons with the regions and they, in turn, down to the facilities, and it goes down in kind of a domino effect. Generally, we will now deal with specific problem issues that come up. We will talk about generic kinds of issues and problems and that if we find fault or have a problem that needs correction, it is typically done in a private conversation.

Mr. **Clinger**. Well, let me engage in a little speculation, too. It seems to me that what may well have happened here is that once the regional office got a look at the first cut, if you will, of the files and found them to really be inadequate and registered those complaints that somebody said, you know, "Do it over. I mean we have got to get a better fix on this thing."

And, you know, I guess the thing we are trying to get at is that in fact what happened or did you or Mr. Gunter or somebody say, "Well, you know, we screwed up. We had better do it all over again on our own and get these people off our back."

Mr. **Miller**. I believe it would have come from the Region, but I——

Mr. **Clinger**. You do not have any recollection of who might have done that?

Mr. **Miller**. I do not recall the specifics. No, sir, I do not.

Mr. **Clinger**. Could it have been just kind of—evolved over a period of time that it became clearer and clearer that you had better go and redo this thing?

Mr. **Miller**. We were sending requested documents up on an ongoing basis, that is true.

Mr. **Clinger**. Mr. Peterson testified earlier today that his procedure in terms of looking at these files and making corrections was to give you a little white slip indicating where the inconsistency was and getting your approval to make those changes. Is that your recollection of the way he operated?

Mr. **Miller**. I believe so, yes, sir. That was the general practice: to highlight the problem, and I would take a look at it and if it did require a correction, identify the correction. Or I would research further if it required additional research.

Mr. **Clinger**. Many changes were made from the notation of "AL" to "AWOL." Mr. Peterson speculated that those changes were authorized by you on the general assumption that since all annual leave had been cancelled, if the person was absent, it would be deemed AWOL. Is that your recollection?

Mr. **Miller**. As a general policy, after Mr. Gunter's review, he would make the determination and, if the individual, he did bring some people back that we had changed the annual to the AWOL and in reviewing and researching found that they had not been notified and were in fact where they attested to, then Mr. Gunter would make the determination as to whether it would be AWOL or annual leave. And then I would follow-up and have them correct the documents accordingly.

Mr. **Clinger**. Do you recall whether Mr. Peterson worked in the war room after October 1st and, if so, for how long?

Mr. **Miller**. I believe he was in the war room, I believe until late October, possibly the end of October. I do not recall the exact dates. He was involved in the review and——

Mr. CLINGER. He would have been involved in the production of the documents that were—that comprised the second shipment?

Mr. MILLER. In the review, the reproduction, we had women in there doing the reproduction, the actual reproduction. I do not believe——

Mr. CLINGER. I do not mean the actual reproduction, I mean working on reviewing and changing the documents which then became a part of the second shipment?

Mr. MILLER. Yes, sir.

Mr. CLINGER. Aside from Mr. Peterson, could you give us an idea—I am going to read you some of the individuals who were at some time or another involved in the war room and I want you to tell me if you can recollect which of these individuals knew of the War Room activities that did produce the second shipment. You have already indicated Mr. Peterson would have known something about that having been there.

How about Clyde Campbell?

Mr. MILLER. Yes, sir, I believe he was involved.

Mr. CLINGER. He would have been there.

Mr. MILLER. Yes.

Mr. CLINGER. And George Gunter?

Mr. MILLER. No, I do not—Mr. Gunter was only in the war room to review documents on the oral hearings at the beginning. He then—then after he completed reviewing the initial documents from the initial hearings, then he went back to the front office and he was not involved——

Mr. CLINGER. In the war room?

Mr. MILLER [continuing]. In the war room.

[Counsel and witness confer.]

Mr. MILLER. I am not sure the personnel that were in the war room were totally aware of what we were having them do. In other words, I would tell the gals to go through and reproduce this out of the file.

Mr. CLINGER. Right. Would Mr. Gunter have been aware of what you were doing in the war room, even though he may not have been present and the purpose of what you were doing?

Mr. MILLER. I would think he would have been aware that we were doing it, yes, sir. I am not sure of that fact.

Mr. CLINGER. And would you assume that he would have been involved in the decision to conduct the activity?

Mr. MILLER. I do not necessarily think he would have had to have been. I do not recall the specific incident.

Mr. CLINGER. How about Joseph Yokley?

Mr. MILLER. He is a regional office specialist. Mr. Yokley is from the Labor Relations Branch in the Region. I do not recall him having been in the war room.

Mr. CLINGER. Would he have been—do you think that he would have been aware of what the activity was? Was he knowledgeable about the activity that was going on and why it was going on?

Mr. MILLER. He was knowledgeable of the files. I believe he was the focal for Chicago Center, if I am not mistaken. He was the Labor Relations' specialist that was the focal point.

Mr. CLINGER. So, he might have been one who was raising concerns about the quality of the first documents that were——

Mr. **Miller**. He had made requests to me, yes, sir, for additional information and so forth.

Mr. **Clinger**. Joseph Brunati or Jack Brunati, I am sorry.

Mr. **Miller**. Jack Brunati was also a Labor Relations specialist in the Region and——

Mr. **Clinger**. He would have been aware of the activity.

Mr. **Miller**. I am not sure he was aware. I do not think I received as many or I cannot recall any specific calls from Jack about the subject matter, but he may have been aware, I do not know for sure, sir.

Mr. **Clinger**. But you did testify that you have discussed this with Mr. Shewfelt?

Mr. **Miller**. I believe that he was present in some of the telecons that issues may have been discussed. But not knowing the specific one that we had decided to go with the second shipment, I do not know whether he was there or not.

Mr. **Clinger**. Ken Paterson?

Mr. **Miller**. Mr. Paterson was the Air Traffic Branch Chief and he was at some of the telecons—I am sorry, Division Chief, but I do not know whether he would have been aware of it or not.

Mr. **Clinger**. Of what you were doing and why?

Mr. **Miller**. Right.

Mr. **Clinger**. Wesley Walker?

Mr. **Miller**. He was the Branch Chief, our direct Branch Chief. And he was on many of the telecons. I do not know whether he would have been aware or not.

Mr. **Clinger**. Well, you assume that he would have been somewhat aware since you did indicate that in the telecons, there was discussion about the files and about the need——

Mr. **Miller**. Yes, sir. He could have been.

Mr. **Clinger** [continuing]. To provide additional information.

How about Carl Schellenberg?

Mr. **Miller**. I do not know how many of the telecons Mr. Schellenberg attended. He, or a specialist, may have been there. Some of them, not having identified all of the people on the other end, I do not know who all was there.

Mr. **Clinger**. Did any of those people from the regional office ever visit the facility or were involved in the war room, you know, physically present in the war room?

Mr. **Miller**. I do not recall the regional people coming out into the war room. No, other than the people that had worked in there: Cullerton, Peterson and like Campbell and the other people that were involved in the war room.

Mr. **Clinger**. Thank you, Mr. Chairman.

Mr. **Oberstar**. Did you or anyone at Chicago Center specifically notify the regional office that this second review of documents was going on?

Mr. **Miller**. I do not recall specifically, Mr. Chairman, but I am sure that whatever stimulated the second shipment of documents, people in the Region were aware and Labor Relations, I would believe, branch should have been aware.

Mr. **Oberstar**. You have alluded to and, in fact, more than alluded to, mentioned specifically several telecons that occurred during this period of time. Were you doing telecons during the time of the second—preparation of the second shipment of documents?

Mr. **Miller**. Yes, sir. They were ongoing.

Mr. **Oberstar**. So, those were telecons with regional office, you called them branch or agency?

Mr. **Miller**. Facility.

Mr. **Oberstar**. Facility representatives present on the other end of the line. So, regional office personnel were aware of the activities in which you were engaged in preparing this second shipment of documents, correct?

Mr. **Miller**. I am not sure that they were aware of that specific function other than whoever was involved in requesting it or having it sent, sir.

Mr. **Oberstar**. I will withhold further questions. Congressman Rowland?

Mr. **Rowland** of Georgia. Can you recall about how long you knew Mr. Peterson before 1981?

Mr. **Miller**. Probably five to eight years, I believe. I am not real sure on that, sir.

Mr. **Rowland** of Georgia. About. What was your relationship with him? Were you pretty good friends or just casual to each other or what?

Mr. **Miller**. Until he became involved with the oral hearings, I would title it as a casual relationship from the Regional Office Personnel Branch.

Mr. **Rowland** of Georgia. As I understand it, he had already left the F.A.A., but he came back to participate in this activity. Do you know why he was chosen to come back?

Mr. **Miller**. The criteria that they used for hearing officers were laid out in recommended form to the facilities chiefs and I believe he met the criteria for a hearing officer.

Mr. **Rowland** of Georgia. You really had nothing to do with his coming back?

Mr. **Miller**. As an individual?

Mr. **Rowland** of Georgia. Yes.

Mr. **Miller**. In my direct input, I do not believe I had other than looking at a list and knowing we needed a lot more than what we had. We were short of hearing officers. I may have been involved in making the call, yes. That could very well have been, but we received a list and confirmed with the Region and then I called some of the people on the list to ask them if they would serve, yes.

Mr. **Rowland** of Georgia. Were people involved in the oral replies and the changing of records other than Mr. Peterson?

Mr. **Miller**. Yes. Mr. Cullerton was also an oral reply official and worked in the war room after the initial oral replies.

Mr. **Rowland** of Georgia. Two people, then.

Mr. **Miller**. That were involved in the oral hearings? Yes, sir, that was all.

Mr. **Rowland** of Georgia. How did Mr. Peterson communicate that there were some inaccuracies in the records to you?

Mr. **Miller**. Most of the time, I believe, he would write on a slip and paper clip or clip the slip with the errored 304 or work shift and lay it on the desk that I had been working at.

Mr. **Rowland** of Georgia. And then you reviewed that?

Mr. **Miller**. Yes, sir.

Mr. **Rowland** of Georgia. And who else reviewed that?

Mr. **Miller**. Generally—you mean who else was involved in the review in the room?

Mr. **Rowland** of Georgia. Yes, in reviewing those notes.

Mr. **Miller**. I believe that I would have been one—Dave Erickson may have been involved in the initial ones, but we moved him up to the platform relatively early in the proceedings and while the oral hearings, the initial hearings were going on, I do not know of anybody else. Mr. Gunter may have looked at the notes if I was not in the room. And I am not sure on that, sir. I believe I was the only one that I can recall on an ongoing basis. I would review the notes and tell them to correct it.

Mr. **Rowland** of Georgia. And, as I recall, the oral replies had taken place prior to the amending of the records?

Mr. **Miller**. Yes. The first oral replies had been completed by around September 1st, and then we had some subsequent ones that were held the end of September that Mr. Cullerton and Mr. Peterson held at DuPage Airport offices.

Mr. **Rowland** of Georgia. About how long would it take from the time that you received the notations about the records from Mr. Peterson before you would get back to him and tell him to amend the record?

Mr. **Miller**. If I was in the room, it may be a matter of just seconds or minutes. And, if I had been out doing something, I would review them and attach which ones to be corrected and given back to them or put them on a stack and tell them if I was reviewing them late at night when they came in the next day, tell them which ones to go ahead with, I believe would have been the normal procedure.

Mr. **Rowland** of Georgia. Did you discuss with Mr. Peterson the changes, and amendments that were to be made to any extent, or would you just tell him to make the change?

Mr. **Miller**. If I had a question or there was something that was not clear, I would probably question him. But, normally, I would just tell him which document needed to be amended and where to add the name, if it was a missing name, or if it was to change an annual to AWOL, if the Chief had made that determination, then I would have him change that.

Mr. **Rowland** of Georgia. Mr. Peterson testified that there were no notations made on the amendment as to who made them or when they were made. Is that customary to change a record like this without some indication as to who made the change and when the change was made?

Mr. **Miller**. Early in the procedures, I had just gone ahead and made them. Later in making amendments, I would annotate my initials and date later in the proceedings. I had put my initials and dates on the changes.

[Counsel and witness confer.]

I am sorry, Congressman. Excuse me. Were you asking as a normal practice?

Mr. **Rowland** of Georgia. Well, I was asking as a normal practice and then what you did there?

Mr. Miller. No. As a normal practice, no. Many of the times are changed today on the 304s on an ongoing basis and no initials are put on or times. A shift may be changed and in many cases that is not annotated as to when it was approved. Or leave granted to an individual and there is no annotation made as to who approved it in many cases.

Mr. Rowland of Georgia. These were rather unusual circumstances, because these were people whose jobs may depend upon the changes that were being made. Is that not true?

Mr. Miller. Yes, sir. I believe at the time, the feeling—my feeling was that we were correct in the records to properly reflect shifts that they should have been working or leave status that the Chief had made a determination on.

Mr. Rowland of Georgia. Were any records ever changed that would benefit the specific controller?

Mr. Miller. I believe so, yes, sir.

Mr. Rowland of Georgia. Thank you, Mr. Chairman

Mr. Oberstar. Mr. Miller, we have already identified the 14 boxes of material delivered to the regional office as the second shipment of documents. You corrected your discrepancy between your March statement and subsequent information. How were those boxes transmitted to the regional office? Who delivered them and to whom were they delivered?

Mr. Miller. I believe that I took some of the boxes up, personally. I believe Mr. Peterson was involved in some boxes. I used whoever was going up to the Region to deliver the boxes. I am not sure whether Mr. Gunter took some or not. I believe he may have taken some up to the Region. And the people were given the instructions to deliver them to the Labor Relations Office.

Mr. Oberstar. To whom, specifically, in the Labor Relations Office?

Mr. Miller. I do not believe we had identified any specific individual to deliver them to. In the cases where I would bring items up, sometimes I would come up late in the evening, 8, 9, 10:00 at night. I recall coming up very late in the evenings and delivering them with a hand truck up to the Labor Relations Office. I do not recall any specific person.

Mr. Oberstar. You just put them there in the office?

Mr. Miller. Generally, I would ask——

Mr. Oberstar. Was someone on—no one to sign for those records except maybe a clerk perhaps?

Mr. Miller. I believe that we delivered them to whoever was there. It may have been a clerk or it may have been a specialist present and we would ask them where they wanted them.

Mr. Oberstar. But even at 8, 9, 10:00 at night, there was somebody on duty. These were still extraordinary times.

Mr. Miller. Yes, sir.

Mr. Oberstar. And there were personnel working those hours to receive the shipments. So, there is no way that personnel in the Labor Relations Office in the regional office would not have known that there was this second shipment of documents?

Mr. Miller. Yes, there were people there when we delivered the documents, sir. I am not sure that we specifically would tell them what was contained in each one. There were many, many days that we brought documents up. I do not believe we identified the specifics of them, no.

Mr. **Oberstar**. The regional office was expecting documents from you.

Mr. **Miller**. Yes, sir.

Mr. **Oberstar**. And you delivered them.

Mr. **Miller**. Yes. And there were documents from all the facilities being received in the regional office, sir.

Mr. **Oberstar**. Yes, but these were controller records for a very specific time and a very specific purpose. These were different from perhaps any other document.

When would Mr. Peterson have delivered documents? In September or in October?

Mr. **Miller**. I do not recall the specific date and I did not mark down who took what boxes up. So, I do not really have a recollection of the specific time he would deliver.

Mr. **Oberstar**. Would he have delivered documents associated with the second shipment?

Mr. **Miller**. I am not sure whether it was the first or the second group that he had taken up.

Mr. **Clinger**. Would the gentleman yield?

Mr. **Oberstar**. Yes.

Mr. **Clinger**. Did Mr. Peterson actually work on the preparation of the first set of documents? Was he only involved in the preparation of the second set of documents?

Mr. **Miller**. No, he worked on both sets.

Mr. **Clinger**. He did work on both.

Mr. **Miller**. I believe so, yes, sir.

Mr. **Oberstar**. He was an oral reply officer in the time frame just following the strike and through what? September?

Mr. **Miller**. The majority of the oral hearings were conducted, finished by the first week in September. I am not sure of the exact date. And then there were some rehearings that were conducted late in September and he was involved in those, also. And he worked in the war room in between those times.

Mr. **Oberstar**. So, in between the first week of September, say, the end of the first week of September, roughly, and then he worked as oral reply officer, a period of time thereafter until late September, he worked in the war room. He then came back to the War Room and worked through October; did you say?

Mr. **Miller**. I am not sure of the exact time. It was mid to late October, I believe, when he left.

Mr. **Oberstar**. When he concluded his work, is that the time when he delivered documents to the regional office or was it in between, prior to?

Mr. **Miller**. No, I believe it was prior to the time he left. I do not recall the exact time, but I had asked him to deliver the documents because he lived up here. He and Mr. Cullerton and Elsie Marcks, who was one of the women that came out and did some typing from the regional office, were all people that would go to the Region up here and, if I could save myself a trip, I tried to wherever I could.

Mr. **Oberstar**. Certainly. I understand that.

Help us understand what was occurring in that second review of documents. You went through controller records. What? Roughly 400-some controllers?

Mr. MILLER. Yes. 450-some, I believe.

Mr. OBERSTAR. Yes. Sizeable, huge amount of paperwork to go through. And, as you testified before the committee, you believed that your work was accurate. I mean not just you, I mean you and your whole staff. And, now, you are involved in this second review, what did you find characteristically in this second review that was not done in the first review? What types of information was needed to be added to the records to make them complete?

Mr. MILLER. I guess we did not have a comparison to make, sir. The first ones are already gone. The second ones we made complete sets of documents and Xeroxed the files, again, so, I do not know what would be in the second ones that——

[Counsel and witness confer.]

OK. This was just a reproduction of the file that was there and we would go against a check list of what was to be in the file. So, I do not know what the difference would have been——

Mr. OBERSTAR. But you were making corrections in that second set of records to be sent up to the regional office. Is that not right?

Mr. MILLER. We are sending the documents up. Specific corrections, I do not believe would necessarily be made. We were just Xeroxing the personnel files, not necessarily——

[Counsel and witness confer.]

OK. The second set of documents contained the current, all the current T&As and all the documents from the file, the personnel file that existed.

Mr. OBERSTAR. So, T&A and sign-in logs.

Mr. MILLER. Yes.

Mr. OBERSTAR. And the work schedules?

Mr. MILLER. Yes, all the documents that were in the file were reproduced and sent up.

Mr. OBERSTAR. We have had testimony that corrections were made on records that were included in that second shipment. Is that correct or is that inaccurate?

Mr. MILLER. Yes. Well, it could have been if we were still making corrections and amendments to T&As that were still pending, that the decisions had come down to bring people back, such as the individual that has been out on a sailboat we were bringing back, and the corrections were put in the second one. And, initially, he was charged with AWOL and then, as the Congressman had asked me, he was granted annual leave, which was to his advantage. And that correction would have been in the second one, yes.

Mr. OBERSTAR. Let me depart just for a moment because you raise an important point there. In the case of a controller who was off on a sailboat, had been scheduled for annual leave, charged AWOL, now restored to annual leave. How was it established that his annual leave was bona fide?

Mr. MILLER. Through researching whatever he presented at his oral hearing. He would give us the information of where he was and who he was with and when he was at specific locations. And we would check it our by calling these locations or calling the individuals and seeing whether that is where he was. And, if the Chief had accepted that as not being available to notify the facility or to be contacted, then he would—at his ruling, change it back to annual leave.

Mr. **Oberstar**. So, at the oral reply hearing is the point at which the controller was afforded an apportunity to correct his record—not to correct his record, but to substantiate his records, I should say.

Mr. **Miller**. That was one of the methods, yes, sir.

Mr. **Oberstar**. Presumably, those who were on strike and did not want to come back would not come to an oral reply hearing. So, only those who did not participate in the strike would go through the oral reply process to reinstate themselves. So, at any rate that is——

Mr. **Miller**. Well, I believe that even some of the people that did strike attended the oral replies. They would be picketing and go to their oral reply and come back to the picket line. So, I believe your statement is relatively inaccurate. They could be on strike and participating in a strike carrying a sign saying, "On Strike." And still attend their oral reply review.

Mr. **Oberstar**. So, the presumption that only those who were not on strike is not accurate. That there were some who are on strike would actually come to the oral reply hearing as well.

Mr. **Miller**. I believe that is true, yes, sir.

Mr. **Oberstar**. That is interesting.

The Chair will yield to counsel for questions.

Mr. **Imus**. Mr. Miller, I think it is necessary to get the record straight here. When we talk about amendments to time and attendance sheets that occurred in October, what type of amendments were those?

Mr. **Miller**. If the Chief had made a determination on change in status, that type of amendment would have gone in. If initially the T&A had been sent in, I believe I testified in previous times that the preliminary T&As had gone in from a working copy of a schedule rather than an actual schedule and we had to amend some of those that were submitted in there. There could have been many of the types of amendments.

Mr. **Imus**. OK. So, we are talking about changes in the pay period 17, then, which was the first week of the strike. There were a great deal of amendments to those T&As.

Mr. **Miller**. And subsequent ones, also, I believe, sir.

Mr. **Imus**. Pete Peterson and Ray Cullerton were hired to be oral officials. What did you have to do to get their employment continued to work with you in the war room in October?

Mr. **Miller**. Explained to Mr. Gunter, to start with, that we were extremely short and everyone else was up on the floor controlling airplanes. And I could not handle it with, especially some new people that my wife and two other people that had not been involved in any personnel actions or work. And I told him that we did have to have some people that knew documents to research some of this instance. I could not keep up with it. And I do not recall exactly how it transpired, but I believe we made a request to Region to retain them.

Mr. **Imus**. Do you happen to know what department in Region would be responsible for that?

Mr. MILLER. I am really not sure, but I believe we went through the Air Traffic Branch to get approval to keep them out there. I am not real sure on who we did ask.

Mr. IMUS. So, it is safe to assume, then, the Air Traffic Branch had knowledge about what Mr. Peterson and Cullerton needed to do in October to continue their employment; is that correct?

Mr. MILLER. I believe it had gone through them, yes.

Mr. IMUS. I wonder if you could share for us the process that you initiated in the war room when you got Mr. Peterson and Cullerton on board. What responsibilities did you give them?

Mr. MILLER. Some of the problem areas that we were having were the names were not appearing on the assigned shifts. And I was having them review the work schedule: take the individual's file and take his work schedule from the file, check it with the master work schedule to make sure it was proper. Then review the sign-ins by day. They had a stack of each day of the week for the first—I do not recall—probably two or three weeks stacked up on tables. And then they would take the day and the shift that the scheduled showed and compare it to make sure that they were assigned on that schedule and showed up on the schedule as it showed, as the work schedule showed and the sign-in sheet showed.

And, later, in the review process, I had them check the time and attendance reports against the records of the individuals to make sure that they all coincided. And I also had them in some of the instances doing some research on specific cases. If there were requirements of a supervisor, a statement said that a supervisor had made a statement—in some cases, I had asked them to confirm that the statements were in there and whatever documents were supposed to be in the files were included in the personnel files.

Mr. IMUS. When it was necessary for Mr. Peterson to change a log, what happened to that log after he made that change?

Mr. MILLER. What happened to the log?

Mr. IMUS. After he made the change, he testified that he put it on a table behind him or next to him. What happened to the log from that point? He said that you then took that log. I am just wondering what would have happened to it?

Mr. MILLER. That would have been put in the individual's files and the—these were made on Xerox copies and I would ensure that the master copy or the original 304 sign-in logs were corrected accordingly.

Mr. IMUS. And how about a change in a T&A? The time and attendance sheet had to be changed, is that correct?

Mr. MILLER. Yes, sir.

Mr. IMUS. And would you give the logs to the time and attendance clerk?

Mr. MILLER. Yes. To either Marsha Devinere or whoever I had working on that.

Mr. IMUS. What type of turn-around are we talking about from when Mr. Peterson would make a change on a sign-in log to when the T&A would be amended? Would it be an hour, a day, two days?

Mr. MILLER. Well, if Marsha was in the room—later, in the period, after I had brought Marsha down to the room, it would just go from one desk to the next. And it could take a very minuscule amount of time: 2 minutes, 3 minutes. Or, if one or the other was not there or present, it could take up to possibly two days.

Mr. IMUS. However, it was probably something that you would want to keep on top of. I mean the sooner the log was changed, you would want the T&A to be changed pretty quickly or you would get caught in an avalanche if you were not staying on top of it.

Mr. MILLER. Yes, sir. We had a problem. Marsha Devinere's, I believe one of her parents passed away. And we did get behind and I tried to identify boxes on what had to be done. And I made sure that it went to the right boxes. Or, if it needed multiple actions, that it was put in or assigned to someone to accomplish.

Mr. IMUS. You testified about that you even delivered some of the boxes that resulted in the second shipment. Now, these documents were actually the work product of the review that you have just described; is that right?

Mr. MILLER. Yes.

Mr. IMUS. It would have been the work product of that review, errors caught, things added, things taken out, et cetera.

Mr. MILLER. Yes. It would have contained the corrected 304s and time and attendance corrections that were made, yes.

Mr. IMUS. And you testified that the Labor Relations specialists accepted these documents and that they knew they were coming. You did not have to explain that this is a second shipment of records, they obviously knew that they were coming?

Mr. MILLER. I do not recall the specifics, but I—when we would bring boxes up there, I would tell them the documents, the documents from Chicago Center. I do not recall having explained specifics.

Mr. IMUS. But because they had a first shipment of what supposedly were those records and, now, they have a corrected, they have a better version of those records, they had to be aware of that. Or else I guess their question would be: "Well, Mr. Miller, what are you doing? We already have so-and-so's file."

Mr. MILLER. I do not know who specifically—whether there was a designated person responsible or that—I am not sure who knew what as far as Labor Relations.

[Counsel and witness confer.]

Oh, yes, somebody—yes.

Mr. GOEBEL. Mr. Miller.

Mr. OBERSTAR. "Yes," what?

Mr. MILLER. Yes, somebody had to know. I am not sure who the individual was. I am assuming that Labor Relations specialists were aware of it.

Mr. GOEBEL. Mr. Miller, did any one of the persons to whom you delivered boxes contained in that larger second shipment of records ever express surprise to you that you had brought them to their attention, or ask you what they were supposed to do with them?

Mr. MILLER. No, not that I can recall.

Mr. GOEBEL. So, it would be your understanding that they fully expected you to bring those records there and were in fact anticipating them?

Mr. MILLER. I assume that they knew they were coming.

Mr. IMUS. I just have a final question. Mr. Miller, in reviewing the files of the employees who were the probationary employees, we note that their logs have not been changed. Could you tell us why those logs were not changed?

Mr. **Miller**. I believe the probationaries I pulled out right at the very beginning because they were not given oral hearings and I did not have to do anything to any of the probationaries as far as making sure——

Mr. **Imus**. So, because they were not involved in litigation, then those logs need not be changed?

Mr. **Miller**. In oral hearings. This was——

Mr. **Imus**. Or any MSPB hearing.

Mr. **Randall**. If I could interject for a moment there. The ability—the employment status for a probationer is quite different than it is for a career-type employee. And the termination procedures, the standards, are totally different than they are for the others. So, without an oral hearing and other things, apparently, there was not a need to go through the same kind of regime.

Mr. **Imus**. However, I think the FAA's testimony in the first hearing was clear that the reason why the records were changed was to make the documents accurately reflect the situation. My question is—and the changes were not made because of litigation. My question would be: Why, if that is your goal, were the probationers' logs not changed?

Mr. **Miller**. I pulled the files out on the probationaries. They said there would be no requirement to give them oral hearings. So, I just took them out right up front. I did not even——

Mr. **Imus**. So, the changes were made for the logs because of the pending oral hearings, litigation, et cetera.

Mr. **Miller**. Yes, some——

Mr. **Imus**. Not necessarily to make the record look accurate.

Mr. **Miller**. Well, it was to make the records accurate.

Mr. **Imus**. But the probationers, their records could stay inconsistent or inaccurate?

Mr. **Miller**. They may still be, yes. I do not know. I have not reviewed them.

Mr. **Randall**. Mr. Imus, if a probationer were terminated for having participated in the strike, it probably was inconsequential ultimately for us in a legal sense whether or not the specific hours that they had struck. That was not ultimately going to be at issue because there was no appellate process. And I think that resulted in a different kind of treatment of the document.

Mr. **Oberstar**. Mr. Goebel?

Mr. **Goebel**. Mr. Miller, just picking up on something Mr. Imus asked you about earlier and that was the correction of the time and attendance records based upon different notations that were made in the sign-in logs as a part of the War Room activity. You mentioned that you thought it was advisable and tried to adhere to a procedure whereby those changes to the T&A records were made if not concurrent soon after the changes in the sign-in logs were made. Is that correct?

Mr. **Miller**. Yes. As soon as we could get to them.

Mr. **Goebel**. At the same time, did you institute any procedure of a check back or a confirmation nature which would satisfy you that, in fact, those changes had been made to the T&A records? In other words, did you just send a note to the T&A clerk: "Change these records" and forget about it? Or was—did you ask to be notified or have any sort of confirmation brought back to you that in fact that change had been made?

Mr. **Miller**. I do not recall any check and balance to insure that it was completed. No. I signed many of the amended T&As, the amended T&As were coming downstairs and I believe I signed a large majority of them.

Mr. **Goebel**. Does that mean then, what? Your notation to the Clerk would go forward. The Clerk would make the change on the time and attendance record. The time and attendance record then would come back to you and you would certify that the change has been made by means of signature or initials on the T&A?

Mr. **Miller**. I believe, yes, that was the general procedure.

Mr. **Goebel**. Okay. One question, then in a very general sense. Having described to us, as you have, the process by which the war room undertook the review and revisions of the documents that were contained in the second shipment of records, the role of the Great Lakes Region Office in reviewing documents that were contained in the first shipment of records, is there any doubt or uncertainty in your mind that at least one individual or a group of individuals in the Great Lakes Region Office were at least aware of if not involved in a decision to request that the Chicago Center review the records and make changes in them so that the records were indeed accurate and consistent?

Mr. **Miller**. I am sorry. Could you ask me, again?

Mr. **Goebel**. Do you have any hesitation at all about ascribing to the Great Lakes Regional Office, either an individual or a group of individuals, some knowledge and involvement in the conduct of the war room at the Chicago Center in updating, amending and clarifying the records that became part of the second shipment of records?

Mr. **Miller**. I believe, sir, they had a knowledge of what we were doing. I am not sure of specifics as to whether they were——

Mr. **Goebel**. No. I am not talking about Change A to Change B. I am just talking about the process employed generally.

Mr. **Miller**. I would believe they would have a general knowledge of what was being done, yes.

Mr. **Oberstar**. Yes. That was a question I asked earlier about knowledge of. But decision in, and that relates back into these telecons that you referred to. I think somewhere along the line somebody in that regional office had to say very clearly, either someone or collectively, more than one person: "The information in the first set of documents that you sent up here is not enough to proceed with these cases before the MSPB. We need more complete information. And we need more corrected information." Or, "We need this information corrected." And then you went through this whole process a second time, the whole set of documents, all those records and corrected them and shipped them up to the Region in the second set of 14 boxes of documents. Is that the way it occurred?

Mr. **Miller**. In general. I do not recall what the specifics were for requiring the second one, whether there was enough missing documents to require it or whether the multiple copies had created problems. I do not recall the actual stimulus for generating the second set.

Mr. OBERSTAR. But something stimulated it.

Mr. MILLER. I believe so, yes.

Mr. OBERSTAR. And just to be sure that we understand clearly: You are not able to identify for us an individual in the regional office or any group of individuals or any specific phone conversation or telecon that resulted in what you understood to be a directive to undertake this second review of documents?

Mr. MILLER. Not a specific. No, sir, I do not.

Mr. OBERSTAR. The idea for doing this second review was not yours. You have said that already.

Mr. MILLER. I do not know whether it was or not, but I am sure that I did not do it specifically because I thought it would be a good idea. That is true.

Mr. OBERSTAR. No. That was a big job. You did not need that headache all over again. Somebody else said, "Mr. Miller, we have got to do this." We are trying to find out who is that somebody else? Somewhere that idea originated outside of Chicago Center.

Any other questions?

[No response.]

We will want you to return later today for further questions on other aspects and we just want to advise counsel and witness not to discuss conversation with the other witnesses. Thank you, Mr. Miller.

[Witness was excused, to be recalled, again.]

Mr. OBERSTAR. Now, we would like to see Mr. Walker.

[Witness sworn.]

TESTIMONY OF WESLEY WALKER, FEDERAL AVIATION ADMINISTRATION

Mr. OBERSTAR. Thank you for coming before the committee to help complete our record of inquiry into the matter of the record keeping and associated activities following upon the August 3, 1981 job action by air traffic controllers. We are trying to, in this executive session, fill in some gaps in the testimony that was given previously.

The information before the subcommittee indicates that the Great Lakes Region Air Traffic Division played a role in processing and reviewing cases of individual fired air traffic controllers, both the cases and the files and records pertaining to those air traffic controllers.

What specifically was that role?

Mr. WALKER. Well, after the strike occurred and after the oral hearings and then the records would come in, we reviewed records for completeness. We also reviewed for those areas that there was a doubt of whether the person should have been removed. And we had assistance with the legal folks in the Great Lakes Region as well as Washington. The Washington and the attorneys in the Region reviewed records and found cases that possibly we should reinstate or settle in that there was not enough hard evidence, per se, to continue on with the process. And then we would review those and give our recommendation to Legal on whether or not we supported their findings or not in just basically a direction-type mode. During the whole strike, we had daily telecons to give information of the kinds of things that should be in each file, the format, things of that nature. And then I was also involved in the rehiring and staffing and things of those nature.

Mr. OBERSTAR. A big responsibility.

How many centers fall under the jurisdiction of the Great Lakes Region Office?

Mr. WALKER. Four: Indianapolis, Chicago, Minneapolis and Cleveland.

Mr. OBERSTAR. Were you reviewing records, also, in a similar way, in addition to Chicago, from the Indianapolis, Minneapolis and Cleveland Centers?

Mr. WALKER. Yes, sir, as well as the terminals.

Mr. OBERSTAR. As well as the terminals.

Mr. WALKER. As well as the terminals. There were quite a few people reviewing records——

Mr. OBERSTAR. Which other offices were involved in record review?

Mr. WALKER. Oh, we had some of the—I do not really remember who they were, but we had some of the specialists, myself, Labor Relations, some of the attorneys. And, as I recall, it was all the records. I reviewed a lot of Chicago Center's records, as well as some of the terminals. And I did review the other centers, also. I believe that was before the MSPB hearings.

Mr. OBERSTAR. Prior to MSPB?

Mr. WALKER. Yes, sir, I think so.

Mr. OBERSTAR. So, presumably, then, your involvement was from the time period just after August 3rd until November 1982?

Mr. WALKER. Yes, sir.

Mr. OBERSTAR. Could you compare the records and documentation in a general way, without being specific, your recollection of how records—what condition they were in as to accurateness, completeness, orderliness, as between Indianapolis, Minneapolis, Cleveland and Chicago?

Mr. WALKER. Of the four, generally, probably Minneapolis was the best kept format, neat, all the documents that were required to be in there. Followed by probably Indianapolis and Cleveland about the same. And Chicago was the worst.

In the way of the worst, Chicago at the time, they were hit hardest. They were short of staff and they were short on clerical help. And they were—like you take—there were some standard things that had to be in each record, like a GENOT or some type notice that was multiple copies made, you know, and put in everybody's record. Every record had to have that in. And some of those were missing. So, as far as completeness and format, they were not as well done as the other three centers.

Mr. OBERSTAR. I believe in an interview with subcommittee staff, you stated in a general way that the records from Chicago Center were messed up.

Mr. WALKER. They were messy.

Mr. OBERSTAR. Messy.

Mr. WALKER. Messy. They were not as complete and accurate as the other three centers. They were messy.

Mr. OBERSTAR. Help us understand, we have had several people talk about accuracy of records, completeness of records. What are the hallmarks of an accurate record, a complete record? What types of information are necessary to be in that file to make it accurate and complete?

Mr. **Walker**. Well, I think all the documents that were called for. There were—there was a GENOT. I believe there were some—I really do not know which ones, but there were some GENOTs and some other records of that nature that should be in there in a specific place, you know, that could be tabbed that you could go to quickly and see that. Copies of the watch schedule that showed what the individual was working. That should be in there. I believe we had copies of the signed receipt that they received the proposed notice of removal. And the rest would probably be speculation on my part on what was in there.

Mr. **Oberstar**. The time and attendance records?

Mr. **Walker**. I believe they were in there.

Mr. **Oberstar**. So, the GENOT, the watch schedule, sign-in logs, T&A, evidence that they had in fact received their termination——

Mr. **Walker**. Evidence for whether they were at work or not.

Mr. **Oberstar**. Now, how or what yardstick did you use for measuring whether that now complete set of information was accurate?

Mr. **Walker**. We had a check list, I believe, that I would look to see—you would go to a tab and say, okay, is the GENOT—there were not that many, four or five records. And you would look and see if the T&As were there. You would look and see if the signs-in logs are there.

And, additionally, I would look to see what the—the question will come up, I do not have a problem answering it. I had a problem with the annual leave, cancelling or not cancelling at Chicago Center. And I looked—reviewed that at all the facilities, but I tried to key in on Chicago Center, those people, but on the watch schedule and the time and attendance were shown on annual leave, because we had had some kind of mix-up in the annual leave situation. So, those I looked at also in Chicago Center.

Mr. **Oberstar**. One of the things that we found as we went through—by "we," I mean the members and staff, viewing thousands of records, as those watch schedules, they have the controller's name, date, and the time he is supposed to be on duty. And over here "Status: AL." And then, occasionally, there is a line through the "AL," and "AWOL" is noted on the side. No one's initials along side it, no date as to when that change was made. How do you know whether that is an accurate record or not?

Now, you are reviewing that now, and it presumably is complete because "AL" is crossed off. No notification or no notice in the file as to why "AL" was crossed out and "AWOL" substituted. How do you know that is accurate?

Mr. **Walker**. You do not. What you would have to do is ask a question. If there was not docummentation, for example, in that particular file which you saw that occurred—let me back up to kind of give an example.

If, say, an individual was, in that case where it showed "AL" for annual leave, on the 1st through the 8th of August. And then that was back and scratched, "AWOL." Then I would ask the question: Was this person's leave specifically or I would look first to see if there was a document there where somebody specifically cancelled the annual leave and the date that that was done. And then it would have been changed to AWOL if they did not show up for it.

Or I would say: There is a problem with this record because we do not show that's the annual leave. So, no, I would not consider that—there would have to be something else with it.

Mr. **Oberstar**. Something else. And then to whom would you raise the question of adequacy of substantiation?

Mr. **Walker**. I would raise that to the Labor Relations Branch. As I went through the records, I tried to keep out the ones that I thought would be questionable and write those down and then give a note or verbally tell Labor Relations Branch that those I found problems in. Be it in annual leave or be it missing documents or something of that nature.

Mr. **Oberstar**. What, in your review process, what was the relative significance of watch schedules and sign-in logs and T&As? As there would be discrepancies among those three. If you had "AL" on one and not on the other——

Mr. **Walker**. And "AWOL" on the T&A?

Mr. **Oberstar**. Yes.

Mr. **Walker**. That would have to be——

Mr. **Oberstar**. You would have to reconcile it.

Mr. **Walker**. Reconciled, yes, sir.

Mr. **Oberstar**. How did you go about doing that?

Mr. **Walker**. Well, again, can I back up a little further?

Mr. **Oberstar**. Sure, go ahead.

Mr. **Walker**. To give you a little background, first.

Mr. **Oberstar**. Please do. We are trying to get at what this process was and how it evolved.

Mr. **Walker**. Originally, prior to the strike, the instructions were that if you told that individual that if there was a strike, then you must come back to work or something of that nature. Or, if there is going to be a strike, your annual leave is cancelled.

And then we decided that that was not really quite fair because some people do go on vacations and where there are no televisions or radios or newspapers and things of that nature. So, they had to be specifically cancelled. We had to contact the individual and say, "Your annual leave is specifically cancelled." Or, "Cancelled. Report to work tomorrow morning."

Then, in my mind and the people that made that decision, you know they got the information and they should have been back to work.

Well, that information was put on telecons and we had, unfortunately, a lot of things happening very rapidly. And we would have telecons daily. Two, three telecons a day. And not having gone through things like that before, and that is not my field—I am not expert in that field at all—I would have to rely on advice and we get changes, you know, from time to time. And we would try to get those out.

So, shortly after the strike, another one of the Branch Chiefs and I—and I do not know whether it was a month after, but it was after, we went out to Chicago Center to see how the operation was running and how they were doing with people and things that we could do to help. And we went into the room where the strike records were being compiled. And George Acri used to work in Chicago Center and he was one of my counterpart Branch Chiefs, and he knew a lot of the people there. And he just happened to see a fellow he knew and he said, "Oh," he said, "I wouldn't ever consider he went out on strike." And happened to look through the record and it was one of those that the annual leave was not specifically cancelled. In fact, the individual was still on annual leave.

And at that same day, we told George that the rule is that you had to specifically cancel it. If you did not and somebody—and I do not remember the person's name, but we brought that up, if that has not been cancelled, then you must wait until they get back from annual leave and then call the individual and say, "Report to work." And then if they refuse to report to work, then you can process the removal action.

So, with helter-skelter and everything that was going on at that time, that was one of the things that I wanted to make sure because the other centers had done that, that I wanted to make sure that that was done and somebody was not removed unjustly in that vein.

Mr. OBERSTAR. That is very interesting. Did other people reviewing records conduct their affairs the same way as you were describing?

Mr. WALKER. I do not know whether they did or not. I did. There were a lot of different people reviewing and we would go up and review when we could and help out. And I am going to assume that they did, but I am not sure whether they did or not.

Mr. OBERSTAR. Now, the records that were sent from Chicago Center up to the Great Lakes Region Office were sent as we have been able to verify in two batches: one set was sent up from September 14th through October 1. At which point, there is sort of a gray area which we are trying to fill in here.

I assume that as the records were sent up, there was review. You did not wait until they all arrived and then start reviewing them all. But, as you went along, you reviewed these records as they came in. Then somewhere along the line, someone said: "These records are not complete, as a class, as a group of records. We need the whole thing redone." And then a second shipment of records came up from Chicago Center somewhere between October 16 and November 5th. 14 boxes of documents.

Testimony in our hearing record indicates Mr. Miller, himself, delivered some of those boxes sometime late at night: 8, 9, 10:00 at night. And others from Chicago Center delivered those boxes. Did you receive any of those boxes directly?

Mr. WALKER. No.

Mr. OBERSTAR. Do you know anyone who did receive any of those boxes directly?

Mr. WALKER. The only thing I recall on the records were that they were up there. And I really do not know, you know, when they got there or who brought them in.

Mr. OBERSTAR. You said a moment ago you actually made a visit to Chicago Center. Can you recall for us what time frame that was?

Mr. WALKER. I would say that would have had to have been probably in September sometime, during that month. Because it was right after, you know, we had gotten some additional help in and we were out looking at the operation to see how well that was going, what other type support we could give the Center to keep that thing moving.

Mr. Oberstar. After that period of time, through September, when you were—and you were the one working, perhaps among others, but principally on Chicago records. At what point were you aware that a whole second set of records was being submitted?

Mr. Walker. I was not. We met last night about, you know, the areas because I really did not know why I was here, and there was a second group of records and I, I never knew there was a second group.

Mr. Oberstar. You were just continuing to review the documents as though there was only one set of records; is that right?

Mr. Walker. Well, yes, I did that, but after I reviewed a record, I would have assumed that either Labor Relations or Legal would send that record back or ask for the additional documentation if it was lacking something to come in.

Now, whether they did that as a complete record or, you know, brought the documents in, I do not remember anything about that.

Mr. Oberstar. Would you have been aware of when the reviewed documents would have been sent from Great Lakes Region to the MSPB?

Mr. Walker. No, sir, I would not.

Mr. Oberstar. That would not——

Mr. Walker. Other than by rumor, you know.

Mr. Oberstar. Nobody would have notified you.

Mr. Walker. No, sir.

Mr. Oberstar. Specifically and said——

Mr. Walker. No, sir.

Mr. Oberstar [continuing]. "Wes Walker, we are sending this on to the MSPB"

Mr. Walker. No.

Mr. Oberstar. When you reviewed a file and found it to be incomplete, or inaccurate, to whom did you give that file? By "whom," I do not necessarily mean the individual so much as office, and then what happened to that record?

Mr. Walker. I'd give it to Labor Relations Branch. You know, that is who we were helping review.

Mr. Oberstar. Okay. And would there have been more than one person involved in Labor Relations Branch? It would not have been always the same person who would have received the record from you?

Mr. Walker. If I made a note or was verbally going to say, "This stack needs to be looked at." You know, because they were expert in that. I would either verbally tell one of the specialists or gave them a note or said there is a note on it or something. It would not necessarily have been the same one. It would have been whoever was out there because they were in and out quite a bit.

Mr. Oberstar. Okay. And that record file, the file on that particular controller, where would it have gone from the Labor Relations specialist?

Mr. Walker. Okay. I am really, I am really not sure. What I am going to give you is speculation on my part of kind of what I thought occurred.

Mr. Oberstar. Okay. To the best of your knowledge, right.

Mr. **Walker**. That probably the LR specialist would look at it and possibly then gotten Legal involved to look at that to find out, you know, which direction and what advice and what we should do on that.

If it was one that needed further instruction to the facility, either I would do that or Labor Relations or Legal, all parties were giving advice to the facility at that time.

Mr. **Oberstar**. So, it would have gone from you—tracing the document stream—to Labor Relations, to Legal, back to Chicago Center?

Mr. **Walker**. No, I do not know where they went after Legal. They may have went back to Chicago Center, but I am not sure. I do not know what happened to them after that.

Mr. **Oberstar**. Do you recall seeing those documents again, a second time? Would you not have?

Mr. **Walker**. After, after reviewing last night with Mr. Randall and Kupietz, I recall the ones that we found an annual leave problem with, reviewing those and I recalled talking to George Gunter, the manager at the time, and there was a meeting, but I really do not recall that specific meeting with George and myself and Bob Miller and Dick Shewfelt. We had a lot of meetings and I do not recall that specific one—I am not saying there was not one. Undoubtedly, there was.

In trying to sort that out in my own mind last night, I think the main issue—there were, there were some case files in there that there still was an annual leave problem. It was not cleared up and not specific. And the instruction or the advice—I would have to say, "advice." I really was not in a line function. I was staff with a quasi-line function. I could speak for the Division Chief.

That if—to go back and if the individual's annual leave, and I do not believe we gave them the records to take back. I think we listed the names. And if those individuals' annual leave was not specifically cancelled, then Labor Relations and Legal would have to go the next step and reinstate or whatever they would do.

And, if it was cancelled, and whoever cancelled that, you know, must state the fact that they did that. Write—document that and sign their name that: "I did that particular thing." But, if it was not, then we would not press on with that.

Mr. **Oberstar**. Then you would ask for further information on a case by case basis rather than on a wholesale basis? Is that, is that the way——

Mr. **Walker**. Well, as I recall, there were a few and I do not remember the number that for—and then whatever was done with that afterward went back to Labor Relations or Legal and I really do not know, you know, what they did.

Mr. **Oberstar**. Does counsel have a question at this point?

Mr. **Imus**. Yes. If you could turn in your book there to Exhibit 14, I think that memo actually describes the meeting.

Mr. **Walker**. This one right here? It is the list of names.

Mr. **Imus**. Yes. It is a three-page exhibit. If you would turn the page, then you have some written text. By the way the memo is written, the tone of the meeting was: "If we made a mistake bring these people back." It seems to me the memo is written: "We need more information. Go out and get some."

Mr. **Walker**. Well, I did not write the memo. I remember specifically I was I guess a little upset that there were still people that we did not know specifically if the annual was cancelled or not cancelled. And, if it was not cancelled, then you would have to reinstate and stop whatever process was going on. And, if it was cancelled, then whoever cancelled that should say, "Yes, I cancelled that annual leave."

Mr. **Imus**. However, according to the memo, whoever wrote the memo—and we are not quite sure who did write the memo—it seemed to me in those areas that were gray or marginal the decision was made not to perhaps bring them back, but to go out and get additional data.

Did you discuss at that meeting what type of data would be required or would be necessary?

Mr. **Walker**. The only thing that I can recall—and that is fairly clear in my memory because that annual leave situation came up more than once, was the data you needed was number (1) that if somebody cancelled the annual leave, that person should say, "Yes, I cancelled the annual leave."

If nobody cancelled the annual leave, then you sent that back to Legal and LR and would say, "There is no need to go to MSPB because this person should not be removed," if they were on annual leave and not given an opportunity to come back. And that was all the data that I asked for.

And I assumed that, you know, because a supervisor was talking to the people, that the supervisor that cancelled somebody's annual leave, which there were relatively few in this particular instance, would remember that and write that down. And, being reasonable, would do that. And, if he could not remember, it should state so.

Mr. **Oberstar**. That is the heart of this whole process; is it not? Whether or not annual leave was cancelled?

Mr. **Walker**. Yes, sir.

Mr. **Oberstar**. If so, by whom?

Mr. **Walker**. Yes, sir.

Mr. **Oberstar**. And on what basis?

You have given us the most accurate or complete description of that process and we are very appreciative of this. You mentioned that in the course of this review of documents that there were numerous reviews with others, other offices, facilities, including probably telecons with the—telephone conferences if I understand that lingo.

Mr. **Walker**. Yes, sir.

Mr. **Oberstar**. Right? With Chicago Center. Do you recall being in a telecon with Mr. Miller, either one or several?

Mr. **Walker**. The way those worked, we had at that time two ways to have a telephone hook-up. We had one system with the 12 major facilities in the region: the four centers, the six level 4 towers and the two level 5's. And that was a two digit dial. And we would dial all those up together and they would all be on.

Now, who would be in the office, you know, listening to that telecon, I really never knew other than the manager or the deputy.

I probably had telephone conversations with Bob Miller, but, gee, I had so many of them, you know, I do not know specifically when or what was covered in that. A lot of them called and asked me questions.

Mr. **Oberstar**. Well, in the course of a telecon, and I will recognize the gentleman in a moment. In the course of the telecon, would it have been normal for you to say, "Look, on Controller X, we have got this record here. AL is crossed out. AWOL is written along side. There is nothing in the file that verifies that Controller X was in fact specifically notified and has specifically responded."

Mr. **Walker**. I do not recall doing that on telecon. I recall that was a face-to-face, because we had all 12 facilities on. We probably would not do that on a telecon, but we would do that either individually or face to face. And I know I met with people from Chicago Center throughout the whole affair.

Mr. **Oberstar**. When you say face to face?

Mr. **Walker**. Either we would call them in——

Mr. **Oberstar**. Call who in?

Mr. **Walker**. George, the manager..

Mr. **Oberstar**. The manager.

Mr. **Walker**. Miller or whoever George wanted to bring with him that was helping him on the thing. We would call them in and discuss specifics. Like this particular meeting would have been a specific that we would have discussed. But we would have done that on the telephone.

Mr. **Oberstar**. And during that time frame, were you aware that records were being amended in the Chicago Center office, in the war room?

Mr. **Walker**. No. I would assume with this information, those I believe it says, 10, that needed either documentation that the leave was cancelled or say that it was not cancelled, one of the other two would have taken place, but I would not have seen the action after.

Mr. **Oberstar**. I yield to the gentleman from Georgia.

Mr. **Rowland** of Georgia. Just one question, Mr. Chairman.

You had this meeting on December the 7th, 1981, to discuss this list of names, 44 names there, between yourself and Mr. Shewfelt, Mr. Gunter and Mr. Miller. And all of the records had already been sent up to MSPB. Why were you still discussing these names after those records had been submitted on November the 16th to MSPB? Why were you still going over this?

Mr. **Walker**. I do not know when they were sent to MSPB. As I recall, we were in—we had some attorneys from Washington headquarters that were reviewing records. And we were in—while the MSPB hearings were going on, we were still reviewing to reinstate those that needed to be reinstated before we ever went to the MSPB, even though the hearings had already started.

Mr. **Rowland** of Georgia. These had already been submitted and then how would you get this information into the record since they were already submitted?

Mr. **Walker**. I do not know. The submission, I had—I do not know anything about.

Mr. **Kupietz**. Congressman, if I may. Many of the records, the records that were developed after the files were sent to the MSPB, I believe, were introduced at the hearing by the attorney or Labor Relations specialist. So, that is how some of the records would have been introduced into the MSPB proceedings.

Mr. **Rowland** of Georgia. These records?

Mr. **Kupietz**. I am not sure about these particular records, no. But it would at times be the case where a memo or record or whatever would be developed after the files had already been sent.

In my experience, we would have the eyewitness testify rather than even refer to a memo. But if there was a need to introduce a memo, then we would do it at the MSPB proceeding.

Mr. **Oberstar**. The gentleman from Pennsylvania.

Mr. **Clinger**. Thank you, Mr. Chairman.

Mr. Walker, I am a little—I wish you would clarify for me what your role was in the review of the documents. Were you reviewing the documents from the centers mainly to help out the Legal office or the Labor Relations office or would you have been in that loop normally?

Mr. **Walker**. No. I was not in the loop, normally. I was doing it as an extra person to help out. There was a massive review going on.

Mr. **Clinger**. Right. So, you did not review all of the files.

Mr. **Walker**. No, sir.

Mr. **Clinger**. You were just reviewing whatever——

Mr. **Walker**. Whatever ones I had.

Mr. **Clinger** [continuing]. Whatever Labor Relations gave you to look at.

Mr. **Walker**. And I did not review all of Chicago Center's files.

Mr. **Clinger**. Right.

Mr. **Walker**. There were some others, but what was there——

Mr. **Clinger**. I understand. You were reviewing files from all of the centers and, in your words, the Chicago ones were the least adequate and were messed up.

Then, just to clarify on the telecons. You said that they were routine and that they would be with all the—with 12 different centers and so forth involved in them. Were there any telecon just between regional office and the Chicago Center.

Mr. **Walker**. Yes. We did have telephone conversations with that center daily.

Mr. **Clinger**. Daily.

Mr. **Walker**. On any—probably all of the centers daily.

Mr. **Clinger**. Right.

Mr. **Walker**. The way the organization structure was, I had four en route flight service specialists that worked in a section that had a section chief that was a supervisor to that section. And they would deal on day-to-day matters with Chicago Center or whatever center they were assigned to. And, so, there were many, many phone calls. I very seldom had direct calls.

Mr. **Clinger**. But it is likely, given your characterization that the files were really messed up, that one or more people from the regional office were conveying a sense of dismay or concern to those at Chicago Center that those files were really not adequate to take before the MSPB?

Mr. **Walker**. Yes, sir.

Mr. **Clinger**. Is that a fair——

Mr. **Walker**. That is a fair assumption.

Mr. **Clinger**. You, yourself, never stated that necessarily to anybody?

Mr. **Walker**. I do not know if I stated it in that term, but in those that I reviewed, I said, you know, "They are not tabbed. Stuff is not logged in there where it should be. And they are messy. You need to get those in a better order."

Mr. **Clinger**. Right. What we have been trying to establish here is who actually said, "We've got to do this whole thing over, again. We have to go back and correct these things."

Mr. **Walker**. No. I never did that.

Mr. **Clinger**. And you do not know who might have done that at the regional office?

Mr. **Walker**. I have no idea who would have done that.

Mr. **Clinger**. You indicated that at one point you visited the Chicago Center. When would that have been?

Mr. **Walker**. Probably in September, with the incident of the individual that was on annual leave and I told them to wait until he got back off of anual leave. That was probably in September.

Mr. **Clinger**. And you would have visited the so-called war room where the work——

Mr. **Walker**. We did go into the room, war room, if that is what they called it.

Mr. **Clinger**. And who would have been with you at that time?

Mr. **Walker**. One of my counterparts in the Region, one of the other Branch Chiefs, George Acri. He was our Planning and Requirements Branch Chief, and myself. And we went in and I believe Bob Miller was in there. And there were a couple of other people. I do not remember who was in there. We just—our primary purpose of that visit was operational.

Mr. **Clinger**. Right.

Mr. **Walker**. And we just, you know, going around and saying hello to people.

Mr. **Clinger**. This would have been at a time when the first set of documents were being worked on?

Mr. **Walker**. They were still assembling documents.

Mr. **Clinger**. Nothing has been sent up to you at that point?

Mr. **Walker**. There may have been. I do not—I know they were still assembling. They were working on them. Whether they had any done yet or not, I do not remember.

Mr. **Clinger**. Thank you very much. Thank you, Mr. Chairman.

Mr. **Oberstar**. Congressman Rowland.

Mr. **Rowland** of Georgia. I do not have any additional questions.

Mr. **Oberstar**. Mr. Walker, you have given us some very, very useful information here, a very important insight into this process which we have been trying to extract as we have gone through the hearings.

As you reviewed the individual cases of controllers, you found inconsistencies or inaccuracies, you asked for more detailed information: verification, documentation to put in the record, as you said, whether annual leave was specifically cancelled and by whom and on what basis was it cancelled. You asked for that information. And you passed the record then on to Labor Relations specialists with request for that information. It went on to perhaps Legal, back to the Center and then back, presumably. Did you see that document a second time?

Mr. **Walker**. I do not believe I did. It is a little odd—I would have gone to Labor Relations after the review and said, "Here are some that I feel that there is some problems with." Then I would assume Labor Relations would have reviewed those and probably with Legal. And in these instances that the note was on, I am sure I saw those, again, because I know we told—I know I told George Gunter and I assume that Bob Miller was there. You know, I did not particularly recall who was all in that meeting. That that was what had to be done to make that up to date and right. That if it was cancelled, they had to show that it was cancelled. If it was not cancelled, he had to say, "No, it was not cancelled." And we would go from there.

But then I would not see the final product——

Mr. **Oberstar**. The completed result?

Mr. **Walker**. No. I would not see that because that would go back to Labor Relations.

Mr. **Oberstar**. Could you describe for us, for the record, what your title was at the time and your position?

Mr. **Walker**. I was the manager of the Operations Branch in the Great Lakes Region.

Mr. **Oberstar**. And what does Operations Branch do?

Mr. **Walker**. Operations Branch at that time was a facility, individual facility staffing, class quotas to look and say how many center people and try to forecast what we would need due to attrition, Labor Relations, as far as if a manager called and asked a question and we did not have an answer we would get advice and give the answer.

Mr. **Oberstar**. I see.

Mr. **Walker**. Just the daily operation of the facility.

Mr. **Oberstar**. I got the picture. And in that capacity you were not the sole person, but one of several you said, reviewing these records——

Mr. **Walker**. Yes, sir.

Mr. **Oberstar**. Coming in from the centers and towers. Was there one person that had an overview of all these records?

Mr. **Walker**. I do not think so. I do not think one person would have had a complete, you know, by theirself, overview of all the records in the Region. I think that would have been, if it was in Labor Relations, there would have been a Labor Relations Branch manager that would have had specialists working for them. And he would have had input from the specialist, but I do not think it would be one person that would have a complete overview of every record.

Mr. **Clinger**. Would the Chairman yield?

Mr. **Oberstar**. Yes.

Mr. **Clinger**. We have had some indication that there may have been one Labor Relations specialist, for example, assigned to review all of the Chicago cases. Joe Yokley was suggested as being perhaps the individual who might have had overall jurisdiction of the Chicago records. Do you know that to be a fact?

Mr. **Walker**. I do not remember that he was the specific one. I can remember prior to the strike that a Labor Relations specialist was assigned to a group of facilities. You know, like might have had, for example, Chicago Center and maybe DuPage and Palwaukee. But they broke all 120 facilities out into smaller numbers and each one took a group of facilities. And I do not know what Joe had. He may have or it might have been one of the others. But, normally, that is the way it works.

Mr. OBERSTAR. You see, what I am trying to understand here is the process you have described for us which follows along, it seems to me, the way things ought to be functioning in the course of reviewing and verification of documents in this circumstance.

But somewhere along the line we have received information there emerged a directive to the Chicago Center to do a second review of documents and a second batch of documents was then sent up to the Region from Chicago Center. Yet, you have testified that you have not seen a second set. That even the records on which you raised questions you did not review, again. Somebody else would have seen then this second set of documents and even the amendments or clarifications which you requested on somebody else, who would that have been? What office would that have been? Labor Relations?

Mr. WALKER. All of those documents went back to Labor Relations. And I would assume that Labor Relations would have reviewed the document and if it still was not complete—two ways they could have done it. They could have went back to Chicago Center, or they could have asked me to call Chicago Center. But, as far as the final product—I do not know really about two sets of records. I know records were coming in constantly, but they did not go through me, in particular. They might have been dropped off in my branch and somebody pick them up and carry them upstairs. I do not know that that occurred. But I did not review them as they came in.

Mr. ROWLAND of Georgia. May I ask one question?

Mr. OBERSTAR. Yes. I yield to the gentleman.

Mr. ROWLAND of Georgia. You do not recall having reviewed a record that had been reviewed by someone else; do you?

Mr. WALKER. Oh, I probably did, yes.

Mr. ROWLAND of Georgia. Why would——

Mr. WALKER. See, we had some—Mr. Helms, there was a point there that he wanted to do an in-depth review with legal people that knew what they were looking at. And, so, they reviewed them. And those that they found some discrepancies in, yes, I saw those. You know, they would bring those down to the division manager and we would go through that and then the division manager at the time, Ken Patterson, would get with the manager of the Legal, Carl Schellenberg or one of the attorneys and discuss that situation. So, yes, I had seen records that other people had reviewed.

Mr. ROWLAND of Georgia. What would cause that record to come back to you, again? Do you have an idea? If the record had been reviewed and a determination had been made, an amendment had been placed on it, the changes had been made to make the record accurate, what would cause that record to come back to you, again?

Mr. WALKER. That would—that was not the record that I was speaking of. I would not see that record, again, if all that was done and it was accurate. The ones that I was speaking of was the attorneys from Washington and—probably all of them were not attorneys, but the group from Washington that came out and went through a record review and I do not know whether they did all the records or, you know, just spot checked, those that they found problem areas in then went to Legal and then Air Traffic was involved in that on the decision to reinstate or offer settlement or things of that nature. So, that is the kind I was talking about.

Mr. **Rowland** of Georgia. But you do not recall having seen any record that was made what you called "accurate."

Mr. **Walker**. No. I was not really in the record, per se, business. My role in the thing was I would help anybody that needed the help to do that. But my role in the thing was the daily operation of a facility and trying to answer questions.

But I would think, you know, hindsight, looking back, that those areas probably if I would have identified, which I did a certain group that had problems in it, it would probably have been a good idea to say, "Send that back to me so that I can insure now that this is right and correct and we are doing the right thing, what we should do." I did not do that. You know, I let that go to Labor Relations.

Mr. **Oberstar**. Well, if the gentleman is concluded, that was the point that I was coming to. That it seems odd that you would not have—having asked for information you would not have seen it substantiated, verified and looked at it yourself, satisfied yourself that now this record was accurate and that the file was complete.

Mr. **Walker**. In that case, I probably should have, looked back. But there were a lot of cases where we would put information to a lot of facilities and I relied on the Labor Relations and the Legal folks that are, you know—but in this particular case, yes, I probably should have done that.

Mr. **Oberstar**. One final question. Was there—can you recall approximately the number of such cases in which you found the record either incomplete or inaccurate? I am not going to hold you to it——

Mr. **Walker**. On just Chicago Center?

Mr. **Oberstar**. Yes. On the Chicago Center.

Mr. **Walker**. Well, I read that memo and it said 44. I could probably go better when I was done with the day with the little thin folders, it was probably about that high. So, that would probably be an accurate number or close to it.

Mr. **Oberstar**. Thank you.

Counsel?

Mr. **Goebel**. Mr. Walker, at some point in time, the decision was made to retain or extend the contractual services of Ray Cullerton and Pete Peterson who were originally retained to serve as oral reply officials. From earlier testimony from Mr. Miller this morning, we gained the inference, at least, that the Air Traffic Division from the regional office was involved in the decision to retain those two individuals. Is that an accurate recollection?

Mr. **Walker**. I recall Ray Cullerton and, if you had some other names, I would probably recognize them. But what we were trying to do, right early on there, and I think Ray initially was a hearing oral presentations. And we what tried to do, those folks that were retired that would be available to us, we tried to get as many of those back on board to help out the centers. And I had one in the Region. I had a fellow named Smokey Smola that about a year after that went out to the center. And we tried—we were so short in our staff functions because all those staff people we put back to controlling traffic and we needed to keep the staff administrative function going, we tried to get as many people that had that kind of experience as we could and get them in a re-employed—there were two ways to do that at that time. One was a re-employed annuitant and one was on a contract type thing. Most of them that I recall were a re-employed annuitant to help out where we could in the center.

Mr. GOEBEL. Thank you.

Mr. OBERSTAR. No further questions. Thank you very much, Mr. Walker. We appreciate your testimony. It has been very illuminating.

[Whereupon, the witness was excused.]

Mr. OBERSTAR. Our next witness will be Ms. Mary DuBois.

[Witness sworn.]

TESTIMONY OF MARY DuBOIS, LABOR RELATIONS SPECIALIST, FEDERAL AVIATION ADMINISTRATION

Mr. OBERSTAR. For the record, so we pronounce your name correctly. Is it the American pronunciation, DuBois? Or the French pronunciation, DuBois?

Ms. DUBOIS. I prefer the French, DuBois.

Mr. OBERSTAR. DuBois. Being a French major and fluent in the language, myself, I prefer that.

Ms. DuBois, thank you for joining us for the hearing and help round out the information concerning the processing of controller records in the time period following the 1981 strike.

Could you describe for the subcommittee your position and your duties and responsibilities at the time period involved? That is roughly August 3rd through December of 1981.

Ms. DUBOIS. I was and am a Labor Relations specialist for the Labor Relations Branch. My duties at that time were to give advice to the facility managers in our region regarding the strike, the various procedures they were to follow. And I guess basically just taking care of that whole process of the myriad of records that we had to deal with in preparing all the files for the eventual hearings that we would have with MSPB.

Mr. OBERSTAR. There was an awareness at the outset that many of these cases would be going to the MSPB and there was then an understanding that records had to be complete, accurate and consistent?

Ms. DUBOIS. Yes.

Mr. OBERSTAR. Who was the overall person in charge of Labor Relations in the Great Lakes Regional Office?

Ms. DUBOIS. The Branch Manager was Richard Shewfelt.

Mr. OBERSTAR. Did you work directly under Mr. Shewfelt?

Ms. DUBOIS. Yes.

Mr. OBERSTAR. You indicated in your explanation of your responsibilities that your job involved advising facility managers in the region on the records and information required. Did that occasion you to talk with them over this period of time directly or as part of a group of specialists discussing these matters with facility managers?

Ms. DuBois. Yes. I spoke to them directly and we all spoke—we all spoke to different ones. Each of the specialists spoke to different managers.

Mr. Oberstar. Did you talk with Mr. Gunter during this period of time?

Ms. DuBois. I do not recall specifically speaking with Mr. Gunter.

Mr. Oberstar. Did you talk with Mr. Miller during this period of time?

Ms. DuBois. Possibly so. I do not recall specifically.

Mr. Oberstar. Robert L. Miller at the Chicago Center.

Were there what the executive branch refers to as the telecons, telephone conferences, in which several people were involved, on one side you have a speaker phone and one or more persons on the other end of that line to whom you were discussing, so that you might be talking as a group of people to one or more people on the other end of the line?

Ms. DuBois. Yes.

Mr. Oberstar. Did you do that with the Chicago Center?

Ms. DuBois. Possibly. I do not recall specifically. We usually did it with a group of facilities at a time.

Mr. Oberstar. Following your review of files for consistency in internal accuracy and completeness, did you collate information, tab the files, put them together in a packet of information?

Ms. DuBois. Some of them, yes.

Mr. Oberstar. Those that you did not collate and tab, what did you do?

Ms. DuBois. I am not so sure I am understanding your question. There were a variety of people involved in putting the packages together. I was one of those.

Mr. Oberstar. If controller A's records arrived in your office on your desk, would you have been the only person, then, to review that person's file or would there be several people involved in reviewing the file?

Ms. DuBois. Normally, there would just be one unless there was some inconsistency, perhaps, and then it might be given to another person to check. But, normally, it just would be one specialist reviewing that file.

Mr. Oberstar. From whom would you have received that file?

Ms. DuBois. Are you speaking in general?

Mr. Oberstar. From which office, either individual or from an office, the file that you would be reviewing?

Ms. DuBois. They would have been shipped in group. The group from the facility. So, we would have received it in the mail or shipped to us in a box.

Mr. Oberstar. Did you work on records exclusively from one center or facility or from several centers or facilities?

Ms. DuBois. I worked on I suppose most of the facilities at one time or another. I do not recall specifically what facilities. I know some that I worked on for sure. Others, I am not certain. But we all worked on almost all of them, except for small towers. One person could handle a small tower. But larger facilities, usually, it took several specialists to look at all those files.

Mr. OBERSTAR. Are you familiar with Mr. Wesley Walker?

Ms. DUBOIS. Yes.

Mr. OBERSTAR. Would he have been likely to send records to you for review?

Ms. DUBOIS. No.

Mr. OBERSTAR. For action?

Ms. DUBOIS. No. At that time, Mr. Walker was in the Air Traffic Division and he was not a facility manager. He would have no reason to send me a file.

Mr. OBERSTAR. If records were sent from Chicago Center and arrived at your desk, what would be your process of review of that file or files?

Ms. DUBOIS. Okay. They would usually come in a big box. One of us would take a file, the first file that we saw, maybe a number of files. Set them on our desk. And then review that file looking primarily at the proposal letter at the dates in that proposal letter, checking to see if those dates matched the dates on the watch schedule and also matched the dates or the information on the sign-in logs. We would go through and see if the various memos and letters and anything else that was in there was appropriate to be in there and if it seemed coherent, consistent, if it seemed correct, if there seemed to be any problems with that, if the file seemed to be okay. I do not recall how we designated that it was okay, but we either put it in a pile or put some note on it or something to indicate we had reviewed that particular file. And then we went to the next file.

Mr. OBERSTAR. And if it was not okay, if you found inconsistency or incompleteness, or—let me be a little more specific. If you found that annual leave was noted for a controller for the period, say, August 1 through 8, and the annual leave had been cancelled, but you found no notification in the file of a letter of cancellation or specific contact by an authorizing official and the controller to show that that annual leave had been specifically cancelled with that individual, what would you then do?

Ms. DUBOIS. Call the facility manager and ask him to check on that particular situation and explain what the seeming discrepancy was.

Mr. OBERSTAR. Did you have occasion to do that with Chicago Center files?

Ms. DUBOIS. I do not recall specifically the Chicago Center. I know that I called different facility managers and asked them for information. I do not recall specifically Chicago Center. I may have.

Mr. OBERSTAR. Do you recall the condition of controller records from various facilities? Can you describe them as one center having a better set of records than another?

Ms. DUBOIS. You are wanting to know which ones had better ones than others or——

Mr. OBERSTAR. Yes.

Ms. DUBOIS. I would say that I guess in Cleveland Center we did not have a problem, I do not recall. I do recall there were more problems with Chicago Center cases in general.

Mr. **Oberstar**. Did you—did your office on conclusion of your review then send information directly to the Merit Systems Protection Board?

Ms. **DuBois**. From these files?

Mr. **Oberstar**. Yes.

Ms. **DuBois**. After we reviewed a file, we made a number of copies of that file and eventually sent all of those to MSPB. That is correct.

Mr. **Oberstar**. Copying of files was done in your office upon completion——

Ms. **DuBois**. Yes, in the region.

Mr. **Oberstar** [continuing]. Of that review?

Ms. **DuBois**. Yes.

Mr. **Oberstar**. Do you recall that records may have been sent in batches? That is one set of records for a certain group of controllers from Chicago Center received, reviewed and then a second file for the same ones sent, received and reviewed?

Ms. **DuBois**. Second file for the——

Mr. **Oberstar**. Set for the same people.

Ms. **DuBois**. For the same ones? It may have. I do not recall. I do not recall seeing two sets or one.

Mr. **Oberstar**. How many files might you have reviewed in this period of time?

Ms. **DuBois**. I would say from the beginning we fired around 2,700 people, so we reviewed, I would say at least—I reviewed one-fourth of that. We had about four specialists. Somewhere in there. More than I could count or remember.

Mr. **Oberstar**. That is a lot of documents.

Ms. **DuBois**. Yes.

Mr. **Oberstar**. I will pause there. The gentleman from Pennsylvania.

Mr. **Clinger**. Thank you, Mr. Chairman.

Was there any one specialist that would be assigned to specific offices for—in other words, to be in charge of the review of the files from a specific office?

Ms. **DuBois**. There was nothing structured. What would happen is, let's say a small tower or, you know, a medium-sized tower would send in all their files. If it was a small enough number, one person would say, "Okay, I will take DuPage's files." Or "I will take St. Paul Tower's files and I will handle those." Because you became familiar with those particular records and their watch schedule and their way of doing things.

So, one person, if they could handle one facility may do it that way. It would depend on what came in on a particular date. There was nothing said that: "Okay, you, Joe and Jack, handle Cleveland. You, Mary and Bill, handle Minneapolis." There was nothing structured. It was on an as needed basis.

Mr. **Clinger**. Ad hoc basis.

Ms. **DuBois**. Ad hoc basis, yes.

Mr. **Clinger**. To your knowledge was anybody specifically assigned to be responsible generally for the Chicago Center?

Ms. **DuBois**. That is correct.

Mr. **Clinger**. Nobody was?

Ms. **DuBois**. No. Someone may have done more of them.

Mr. **Clinger**. All four of you, you said there were four Labor Specialists reviewing these?

Ms. **DuBois**. Yes.

Mr. **Clinger**. In addition to people like Mr. Walker who I gather was reviewing some of these files, as well?

Ms. **DuBois**. I was not aware that he was reviewing any initially. He was reviewing them in addition to what we would do, but I do not recall him reviewing any other than the ones we were reviewing.

Mr. **Clinger**. In other words, it was—let me understand. There was a double review, here? He was reviewing and then you were reviewing the same file?

Ms. **DuBois**. Okay. I am not so sure what Mr. Walker was doing. The Labor Relations Branch had the responsibility for reviewing the files. Mr. Walker was in the Air Traffic Division. Now, in his position, he may have reviewed some files on his own for other reasons, whatever. But we reviewed each—to my understanding, we reviewed each and every one that came into us.

Mr. **Clinger**. He indicated that he was helping out Mr. Shewfelt because you were overloaded and that he actually undertook the review of some files for you.

Ms. **DuBois**. If he did initial review, that is possible. I do not recall that. Maybe he did.

Mr. **Clinger**. Did Mr. Shewfelt, himself, personally review any of the files? Was he involved in the actual review in checking for accuracy?

Ms. **DuBois**. He may have just simply because we had so many. I do not recall. I recall that primarily it was the responsibility of the specialist, but we had so many, that is very possible.

Mr. **Clinger**. How much time did it take you to go through a file?

Ms. **DuBois**. It would depend on—it could be 15 minutes, a half an hour or something like that. It depended, again, on how—if you were familiar with the way that facility was doing things, how familiar you were with those records, or how complete they were.

Mr. **Clinger**. What is your recollection of types of things that you were finding in the Chicago files?

Ms. **DuBois**. I do not specifically recall reviewing the Chicago files. I am sure that I did.

Mr. **Clinger**. Nothing stands out as being——

Ms. **DuBois**. I know that there were some inconsistencies, you know, with some of the dates. But I do not really recall any specific files. We found that in other facilities, also. Maybe not to that extent, but we found similar problems, some similar problems in other facilities.

Mr. **Clinger**. Would you find, for example, notations where there was no indication of who had made the notations, that entires were not noted as to who made them? That sort of thing?

Ms. **DuBois**. What do you mean by notations?

Mr. **Clinger**. Well, I guess you have said what you found basically was that you found inconsistencies in the records. Items missing?

Ms. **DuBois**. Items, yes. Maybe there was not a time and attendance record in there for a particular date.

Mr. CLINGER. Right.

Ms. DUBOIS. We needed them for not only that initial date that they had, for that date that they had not returned to work, but for several pay periods thereafter. So, maybe one of those might be missing.

Mr. CLINGER. And you indicated that you, at the regional office, as you would complete a review of the file, would make the five copies of that file for forwarding to the MSPB?

Ms. DUBOIS. We did not do that immediately. We would go through all these files and then at some later point, we made copies of all of them. Mass copies. We would have clerical people come in evenings and weekends to make copies for us.

Mr. CLINGER. If you found errors, omissions, inconsistencies in a file, for example, from the Chicago Center, would you make a phone call to somebody at that center to point out the omission, inconsistency or whatever?

Ms. DUBOIS. Yes, that is correct.

Mr. CLINGER. You did.

Ms. DUBOIS. I am saying I do not recall specifically. I would have called the center to say there is a problem with this file.

Mr. CLINGER. With this file and here is what we need, and so forth.

Ms. DUBOIS. Yes.

Mr. CLINGER. But you do not recall making any specific phone calls to anybody in Chicago Center about specific files?

Ms. DUBOIS. I do not have specific memory. I am sure I probably called some time or other.

Mr. OBERSTAR. Would the gentleman yield?

Mr. CLINGER. Yes.

Mr. OBERSTAR. At that point, were records, except for the small facilities that you testified earlier, were records reviewed as a class or as a group? That is Chicago Center records all kept together sent to one or two or three Labor Relations specialists? Or were they just distributed across the board to whomever happened to be available?

Ms. DUBOIS. What would happen is, normally, we would have a facility send all of their records at once, so we would have all of Youngstown's files. When Youngstown's files would come in, you know, if we were all available at that time, we could all look at them. Normally, there would not be that many. One person would do that.

At the same time, we may have got a shipment of Springfield Tower's files or we may have gotten—we may have had a couple of shipments of Minneapolis files, Minneapolis Center. So, at any one time, it depended on who was working on what. If someone was already working on, say, Minneapolis Center, they probably had hundreds of files to review. They would probably stay with Minneapolis.

Someone who was working with the facility, when they finished that one facility, would work on the next facility files. So, again, it was, as you said, sort of an ad hoc basis of whoever, you know, was available.

Mr. **Oberstar**. But the records, and I want to understand this clearly, all of the available records from Minneapolis Center would have been shipped at one time?

Ms. **DuBois**. The centers, I would imagine, probably could not have been shipped all—they would have boxes of them and they may not have been shipped all at one time. They may have sent several shipments. That is possible. I do not specifically recall.

Mr. **Oberstar**. Let me just follow up further. The FAA testified that in their presentation to the MSPB that between September 14 and October 1, 1981, the Chicago Center files were sent to the Region. We have learned in testimony subsequent to that and subsequent to our March hearing that somewhere around October 1 a rather sizeable effort was undertaken to amend and to review these controller records. And we are trying to understand where that effort originated.

Your testimony indicates that on a case-by-case basis you asked for correction of records.

Ms. **DuBois**. That was normally the way it did——

Mr. **Oberstar**. Do you recall any decision being made at any point to ask Chicago Center to wholesale redo their records and send in a new set?

Ms. **DuBois**. There may have been, but I have no memory of it.

Mr. **Oberstar**. Thank you. I thank the gentleman for yielding.

Mr. **Clinger**. Just to follow-up on that and one last question, just so we understand: There were two really massive shipments of records to the regional office and they were totally duplicative. In other words, we had a total duplication, as I understand it, of files for the same controllers. One set would have been reviewed, I assume, by the four of you. Then, along comes a whole other set later on. Would you not almost have to be aware that there were two discrete and distinct shipments because you are covering the same files, basically, only one has, presumably, more information? Were you not aware that there two such humongous shipments of files that were duplicative?

Ms. **DuBois**. I have no memory—I can see what you are saying and one would think you would notice that. But it was not that—all I can say is that we were not thinking that that significant—that it does not fit in my memory. I do not have a memory of it. We had so many files. And someone could have said, "Okay, here is—there were some problems with these files and here are some other ones to replace those." And I would have reviewed those.

Mr. **Clinger**. But you were not conscious of the fact that you may have been reviewing the same controller twice?

Ms. **DuBois**. I guess it was not important, sufficiently important to me then for me to carry a memory of it, now.

Mr. **Clinger**. Thank you, Mr. Chairman.

Mr. **Oberstar**. Were you reviewing Chicago Center files from, say, mid-August through September?

Ms. **DuBois**. We may have. I do not know when we reviewed which files.

Mr. **Oberstar**. Were they coming in—were they coming in individually or in a group from Chicago Center from mid-August through September? Do you recall?

Ms. DuBois. To the best of my memory, they seemed to come in later than the other files or than the other center files.

Mr. Oberstar. Later. So, more likely September.

Ms. DuBois. Perhaps, but I——

Mr. Oberstar. Or even October.

Ms. DuBois. May have. I do not recall. I just remember in general they came in later than the other centers.

Mr. Oberstar. I see. The gentleman from Georgia?

Mr. Rowland of Georgia. You had stated earlier that you remembered that the files from Chicago Center were not as good as some of the others that you received. Do you recall when you began to receive the records for the review at the very outset? At the very beginning? Do you remember about when that was you started receiving the records for review?

Ms. DuBois. Are you saying the Chicago Center files?

Mr. Rowland of Georgia. From the Chicago Center.

Ms. DuBois. I have no idea. In general, like I said before, in general, it seems to me they were later than the other files.

Mr. Rowland of Georgia. When did you begin to receive records for review from all of the centers?

Ms. DuBois. They came in at different times. Cleveland came in first. I do not recall when Minneapolis and Indianapolis came.

Mr. Rowland of Georgia. I mean was it in September?

Ms. DuBois. We may have received some in August, some smaller facilities. It probably would not have taken them that long to have——

Mr. Rowland of Georgia. So, they started coming in in August——

Ms. DuBois. Yes.

Mr. Rowland of Georgia. And how long did this go on? Did it go well into November or do you recall?

Ms. DuBois. It may have. I do not specifically recall.

Mr. Rowland of Georgia. Since you recall that the Chicago records were not as good, generally, as the others, do you recall whether later Chicago records that you continued to receive were better, or worse, or about the same? Did you perceive any change in the records from Chicago?

Ms. DuBois. Like I say, I do not really remember a second batch coming in——

Mr. Rowland of Georgia. Well, I am not thinking about two batches. I am just wondering if——

Ms. DuBois. Okay. Later ones being better than earlier ones?

Mr. Rowland of Georgia. Later ones being better than earlier ones.

Ms. DuBois. I have no memory of that.

Mr. Rowland of Georgia. So far as you know, they seemed to be about the same?

Ms. DuBois. I just, you know, I do not know. They may have. I do not have any memory of that.

Mr. Rowland of Georgia. More specifically, you do not recall ever seeing or being struck by the fact that you might have been looking at a record from one individual that you had seen earlier at a later time? That never happened that you recall?

Ms. DuBois. No. There were so many names.

Mr. ROWLAND of Georgia. I understand.

Ms. DUBOIS. As a matter of fact, we did not really look, we would look at a specific case and if we had particular problems with that case, we might remember that name, but maybe only for that period of time. There were just so many that we were looking at each one for the consistency of that file. And back then I may have remembered, but since then so many things have happened.

Mr. ROWLAND of Georgia. How many people in Labor Relations were doing these reviews?

Ms. DUBOIS. The four specialists were handling. And, you know, as I am thinking of it, maybe Dick, my supervisor, Dick Shewfelt handled some on his own because we had so many. And I do not recall—now, maybe later at some other point we asked other members of the Personnel Division to help us review some. I am kind of cloudy as to whether or not they were doing some of the initial reviews or they were just helping us with the tabbing and the extra copies. Because we did most of the reviews first and then we did the copying and the tabbing and the preparation for the hearing later on. But maybe they reviewed some initial files, too, because we had so many. That I do not know. They may have. I just cannot remember. With that many files, maybe we had them looking at some initial files, too. Because I remember training—we trained some of the other members of Personnel——

Mr. ROWLAND of Georgia. You had to train some other members to do, so, then maybe there were more than just three or four people reviewing?

Ms. DUBOIS. Well, like I say, I do not recall if they were doing some initial reviewing or if we were just training them with regard to putting the packages together. We would have had to train them either way.

Mr. ROWLAND of Georgia. Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you, Mr. Rowland.

You do not recall a second shipment of records coming in from Chicago Center, as such. Can you describe your reaction to the records from Chicago that you did review? Would you describe them as generally being in order?

Ms. DUBOIS. All I have is a general feeling that Chicago files had some problems with them. I do not really recall anything more specific than that.

Mr. OBERSTAR. It was after your review of records that they were then tabbed and Xeroxed for shipment to the MSPB, if I understood you correctly just a moment ago when you said that. Who did the actual tabbing? That is putting the records in an orderly fashion?

Ms. DUBOIS. We had these people that I mentioned earlier, other members of the Personnel Division and clerical people. We would come in—I recall coming in on a weekend, also, and we would get as many people as we possibly could and put these together. So, everyone did that. But we trained them first.

Mr. OBERSTAR. Would there be any need for the Chicago Center or any other centers to send more than one set of documents to the regional office?

Ms. DUBOIS. There may have been some initial discussion that some of the facilities would make the copies rather than us. I do not really recall that. There is that possibility that they thought that they were to make copies instead of us. I really do not recall what happened. I know that for the most part that we made, my remembrance is that we made all of the copies. But that is the only way that I can think of that they would have sent duplicate copies.

Mr. **Oberstar**. Counsel, do you have any questions?

Mr. **Imus**. We are having a difficult time focusing on what is reported to be the second shipment. What we have learned is that the records went out between September 14th and October 1st to the Regional office. During the first part of October, you would think people in the war room, you know, one would think that they would breathe a sigh of relief saying all of those records are gone, and we do not have to deal with those any more.

But what they did is they gathered more personnel, and they went through the documents individually and would change documents if there was a wrong marking on a sign-in log. And those documents were then corrected and put into this second shipment, and sent up to the Regional office.

And I guess that the subcommittee is having a hard time determining what happened to those documents that were part of the second shipment, and how they could have been mixed in with the first one.

Is it possible that your review could have been of the second shipment records, and that you never really saw the September 14th to October 1st records?

Ms. **DuBois**. I have no memory, I do not know. If they sent us some of those documents, we would have looked at both of them. I cannot imagine that they would have a whole bunch. Unless they said okay, these are wrong, we are taking these back and giving you some others. I just have no memory of it, so I cannot really say.

Mr. **Imus**. Bob Miller testified that he would have not taken upon that massive effort, that second review, all by himself, that it would have had to have come from somebody.

Who at the Regional office would have made that determination, would it have been your office?

Ms. **DuBois**. I really do not know. It could have. It is the kind of decision that we could have made, but I have no memory of it.

Mr. **Imus**. But you do not remember a specific instance where you might have gotten a controller's files. You had a lot of controllers' files, and the last thing that you would need to do would be to review 475 controller files twice.

But you do not remember ever having that situation?

Ms. **DuBois**. I guess that it would not have bothered me if we had done that. Our interest was in having correct files. And if that meant reviewing a second batch, that would not have been a problem.

Mr. **Oberstar**. Do you recall having done so?

Ms. **DuBois**. No, I have no memory of doing that.

Mr. **Oberstar**. Of seeing one controller's records a second time?

Ms. **DuBois**. I am saying that that probably would not have bothered me. At the time, I would have realized while we were doing it that it was.

Mr. IMUS. What would happen in your review when you would note an error. And let us talk about an error if, for instance, a sign-in log has the wrong shift on it, or he is supposed to be on another sign-in log, or his name is not on the sign-in log.

What would you do at that point?

Ms. DUBOIS. Then I would call the facility and I would give that information, normally it was the manager or the main person that we would deal with. And say I am sorry, you have this man as being AWOL on the 6th of August. It shows him as being on that shift, but the sign-in log does not have him listed, or the sign-in is for a different day. Please send me the correct sign-in log. I would ask him to look into it, and I might ask him to check and see if that is correct.

Mr. IMUS. Do you suppose that if the Chicago Center got enough of those calls that they would say "we really did a lousy job in sending those records out" and rather than sending you an individual copy, they decided to redo the whole process?

Ms. DUBOIS. That is possible.

Mr. OBERSTAR. Would they have initiated that on their own, or would that have been something either directed or been a consensus decision from one of these telecons?

Ms. DUBOIS. I really do not know.

Mr. OBERSTAR. Was any center asked or any facility asked to just go back and do your records over again, that they are in such bad shape that we cannot make head or tail out of it?

Ms. DUBOIS. Yes, we did have one. Well, we had one facility that did all of the proposal letters completely wrong, and we sent the whole shipment back to them, and had them reissue the letters. It was a problem because they had to reissue the letter, and give the individuals another thirty day period to respond. They had to go through the whole process again.

Mr. OBERSTAR. That was not the Chicago Center?

Ms. DUBOIS. No, it was the Tower.

Mr. OBERSTAR. It was the Tower. Mr. Goebel.

Mr. GOEBEL. In the staff review of some of the records contained at the MSPB headquarters in Washington, we took the opportunity to review extensively some forty of the controller case files held there. And one of the things that we discovered in some five of the forty, three examples of which we have brought with us, included what purported to be or what could be described as duplicate but non-identical sets of controller records including sign-in logs, watch schedules, and time and attendance records.

I can show these to you somewhat graphically I suppose by holding these up. I will bring them out to the witness table if you like. In each one of the files, there is first appearing a somewhat small set of records and maybe six or seven pieces of paper at most. Then there is a second set of records purporting to show the same information which is in most cases some twenty pages in thickness. Perhaps it contains some time and attendance records for dates beyond those which were in the first set of records.

But in all cases, the staff has been able to note changes from what the first set of records would indicate in some sign-in logs and some time and attendance reports into different notations made upon the same sign-in log and the same time and attendance record in the second set.

In all cases, those that are in the first set of records, the thin one, correspond with what the controller attorneys introduced into evidence in proceedings before the Merit Systems Protection Board as Appellant's Exhibit 16, I believe. Those were the sign-in logs and time and attendance records as they existed at the time of the oral reply hearings before the oral reply officials.

The second set of records in each one of these files corresponds precisely with the time and attendance records, sign-in logs, and watch schedules which the agency introduced into evidence as the original evidence relied upon during the removal actions of those fired controllers.

It seems to us that, following what we understand now about the second shipment of documents—the theory being, from our vantage point, that the materials taken from the second shift were substituted en masse in the controller files at the Regional office—what we have here are three examples of circumstances in which somebody put the second shipment of records in but forgot to pull the first shipment.

Do you have any explanation for how that could have happened or any means of verifying that sort of phenomenon?

Ms. DuBois. Since I am not familiar with that happening, you know, anything that I would give would be pure speculation. So I do not know. I really cannot explain it. I did not work that closely with the Chicago Center cases even in the hearings. So you know, any speculation that I would have would be far reaching or would come out of the blue.

Mr. Oberstar. If counsel would yield.

As you were working these records and reviewing, and you needed further information, would that further information have come directly to you? Would you hold the file until the verification of accuracy was received?

Ms. DuBois. Yes, that is the normal way that I would do it. I would hold the file, and I would ask the manager to send me that information. And then I would put it into the file and make sure that that file was complete.

Mr. Oberstar. Is it possible then at that point that that the inaccurate information could also have remained in the file and not be taken out and removed? Would you have removed the inaccurate documentation and substituted the more recent information?

Ms. DuBois. My memory of the cases that I dealt with would be that I would exchange the correct document for the incorrect document and leave it as is. I do not recall that I would have left initial documents in there, but that is the best that I can recall. You know, I cannot speak for what anyone else would have done. If other personnel people in the division reviewed a file, maybe someone else could have. I do not know.

Mr. Oberstar. Mr. Walker testified earlier that as he reviewed files and found that annual leave had not specifically been cancelled or that an individual has not been specifically notified of cancellation of annual leave that he would send notification on to labor relations or to legal, or to another office, to ascertain that information.

Do you recall receiving such directives from Mr. Walker?

Ms. **DuBois**. I do not personally. I know that this sort of thing, you know—that is very possible. It seems to me that that would very likely happen, that he would mention that to us.

Mr. **Oberstar**. Would such information pile have just come to you without you knowing who initiated, and said here we need more information on this aspect of the file without you knowing who sent it to you?

Ms. **DuBois**. We usually got things directly from the facility. I do not really recall, you know, Mr. Walker's part in it. It would seem to me that he maybe have seen them at some point after we reviewed them. But I really do not know. It would seem to me that if I had gotten that file that there would have been a note from Mr. Walker from the individual. There would have been a note in the file, something to explain where it came from, so that we would know where it came from. Otherwise, we would assume that it came directly from the facility.

We usually saw boxed. When they came in, we left them boxed. These are the Youngstown boxes, these is the Midway box. But we had so many, I do not recall.

Mr. **Oberstar**. The gentleman from Pennsylvania.

Mr. **Clinger**. We are talking about specific records here, the time and attendance reports, the sign-in logs, and watch schedules. And they made up Tab 5 in each of the controller's adverse action files.

Would it surprise you to learn that in his October 23rd response to some Freedom of Information Act requests for copies of material relied upon to support controller removal actions that Mr. Shewfelt never included the Tab 5 contents for any of the hundreds of cases emanating from the Chicago Center?

Ms. **DuBois**. Sir, I am not following that.

Mr. **Clinger**. Well, in each of the controller's files, there is a Tab 5 which included the time and attendance reports.

Ms. **DuBois**. The material relied upon.

Mr. **Clinger**. And the material relied upon. But Mr. Shewfelt when he was responding to some Freedom of Information Act requests to submit the material that was relied upon for the removal action, did not include any of that data. In other words, did not include the Tab 5 information on each of the controllers who were removed from the Chicago Center.

Does that surprise you?

Ms. **DuBois**. Yes, that would surprise me. If we were supplying that material relied upon.

Mr. **Clinger**. So I think that what that leads us to conclude or at least to suspect is that the reason that those records were not included at that point in time is that they either did not exist or that they were inaccurate and inconsistent, and therefore were not included.

Ms. **DuBois**. Okay. There was one thing that happened with these FOIA requests. As a matter of fact, we had given each of the controllers, this is speaking in general, we had given each of the controllers I do not know how many copies of information. And if they later asked for some—now this is one instance where this could have happened, I do not know. But I do recall that we had given them something like two, three, four copies, or whatever.

All I can think of at this time is if we did not supply it, the only reason that we would not have supplied it would be because we had already given them five or six copies of that, and we knew that they had a number of copies of them. We had to give them copies of the complete file when we gave them to the MSPB. So a copy to them, a copy to their representative.

If we did not give them copies under FOIA, it would only be because that was unnecessary duplication, even though we unnecessarily duplicated and sent a lot of copies.

Mr. CLINGER. You knew that they would have had it previously somehow?

Ms. DUBOIS. Oh, yes; oh, yes.

Mr. IMUS. I would like to follow up on that just for a moment. Could you look at the documents I am providing to you? This is an example of what each controller received. You will note if you will just skim through the paper that it appears to be everything in Tabs 1 through 4, including letters that they would have received. That does not really seem like an explanation, because you did send them materials that they had already previously received.

The only key thing missing here is the attendance records, which was the evidence relied upon. So I do not know if that would have really been a reason not to include the attendance records. Because included in that package were letters that they had already received.

Ms. DUBOIS. I know that there was a concern about sending things, and we had already sent them so many copies, you know, and sending it to them again. I do know that that was an issue, and I do recall that. With regard to one of these, we probably would have sent them some initial letters and not watch schedules.

Mr. IMUS. However, I do not know if they have ever received the attendance records with the information that was mailed to them, particularly the letters of proposed removal that they obviously had received. So I do not know. It really does not seem like an explanation as to why the attendance records, the key evidence relied upon, were not mailed out to them.

Ms. DUBOIS. Okay. During the oral replies, they would have gotten material from the facility. And then when we sent records to MSPB, we sent them, I think that we sent two copies, one for the individual and one for the representative, and then we had copies for MSPB. So we would have sent them everything that we sent to MSPB initially.

So if we again sent through a FOIA request, that would have been the second, third, or fourth information that we would have sent them.

Mr. IMUS. But that would have been in November when the MSPB received it. This is October 23rd. The MSPB did not have those records until mid-November. So they would not have gotten the attendance records then until mid-November.

Ms. DUBOIS. Okay.

Mr. IMUS. It would not have been because it was included in that.

Ms. DUBOIS. Yes. I really do not know why that would have occurred.

Mr. **Imus**. Okay. It just makes the subcommittee curious knowing that the second review of the records took place at the Chicago Center through October, that perhaps one of the reasons that it was not included is because they were not ready yet, that they were still being worked on in the war room by Chicago Center employees.

Mr. **Randall**. Excuse me, Mr. Imus. You use the term second review. And I thought earlier today that Mr. Miller indicated that it was not per se a second review of the Chicago records, but a duplication of the records that they had which included some corrections and some updated T&As that had been accumulated along the way. I think that it might be a little inaccurate to call it a second review of those records.

Mr. **Imus**. A review that led to the second shipment.

Mr. **Randall**. Okay, fair enough.

Mr. **Imus**. In which corrections were contained in that review.

Mr. **Oberstar**. No further questions. I do not have any further questions. Thank you very much for your presentation before the subcommittee and for helping us complete the record.

[Witness excused.]

Our next witness will be Mr. Yokley. But prior to receiving his testimony, the subcommittee will take a half-hour recess.

[Recess.]

Mr. **Oberstar**. Mr. Yokley, thank you for joining us. Please rise, and raise your right hand.

[Witness sworn.]

TESTIMONY OF JOSEPH L. YOKLEY, SENIOR LABOR MANAGEMENT RELATIONS SPECIALIST, FEDERAL AVIATION ADMINISTRATION

Mr. **Oberstar**. We are reviewing the unfolding of events that occurred subsequent to air traffic comptroller strike in 1981, and the processing of documents that occurred subsequent to that action. We are taking some testimony today to try to fill some gaps in testimony that has previously been given by other witnesses.

Could you describe for the subcommittee your position in the FAA at the time of the strike from the beginning of August through December of 1981?

Mr. **Yokley**. I was assigned as a labor management relations specialist.

Mr. **Oberstar**. And what is your position now?

Mr. **Yokley**. Senior labor management relations specialist.

Mr. **Oberstar**. And were you then and are you now working in the Great Lakes Region Office of FAA?

Mr. **Yokley**. Yes, then and now.

Mr. **Oberstar**. Under whose supervision were you working at the time of the 1981 job action?

Mr. **Yokley**. Mr. Richard Shewfelt.

Mr. **Oberstar**. Was he your immediate supervisor?

Mr. **Yokley**. Yes.

Mr. **Oberstar**. In the ordinary course of business or your work at that time, were you involved in reviewing controller records, records of controllers who had been or were about to be fired?

Mr. **Yokley**. Yes.

Mr. **Oberstar**. And were you assigned to any particular facility?

Mr. **Yokley**. No.

Mr. **Oberstar**. Would you describe for us the process of reviewing documents and how they arrived at your desk, in a unit from a particular facility or just helter-skelter from several facilities?

Mr. **Yokley**. They were mainly brought in and placed in really no order, but just placed in an area. And the specialists, I guess that it was understood that we would just go over and take a box, and not really paying any attention to what specific facility they were from. And that we would review the contents of the box, the contents being folders for that particular facility or location.

And as we completed reviewing one box, that box would go in a completed area, and we would go and pick up another box and go through the same process of review.

Mr. **Oberstar**. Box by box, but without any particular order as to facility or unit, it made no difference?

Mr. **Yokley**. No.

Mr. **Oberstar**. Just a job to be done, and you did it?

Mr. **Yokley**. Yes.

Mr. **Oberstar**. How many labor relations specialists were doing the review?

Mr. **Yokley**. Four.

Mr. **Oberstar**. There were four of you?

Mr. **Yokley**. Including me, yes.

Mr. **Oberstar**. Including you.

And approximately how many records do you think that you reviewed in that period of time?

Mr. **Yokley**. Many.

Mr. **Oberstar**. Hundreds?

Mr. **Yokley**. I am sure hundreds.

Mr. **Oberstar**. Did the four of you review as many as 2500 or 3000 or so, somewhere in that range?

Mr. **Yokley**. I think that collectively, I am not sure of the number of people who were removed from the Great Lakes Region, but collectively among the four, we reviewed a couple of thousand records.

Mr. **Oberstar**. A sizeable number.

Would you have recognized a contoller's record if it came back to you a second time?

Mr. **Yokley**. When you say——

Mr. **Oberstar**. If you reviewed a controller's record and then completed your review of that file, would you have recognized that document if it came back to you?

Mr. **Yokley**. Probably not.

Mr. **Oberstar**. It is likely that a document would have come back to you, and under what circumstances would that have occurred?

Mr. **Yokley**. Probably not. You asked me if it were likely. I am saying probably not.

Mr. **Oberstar**. Let us suppose that you reviewed a controller's file and you found a controller scheduled for annual leave during the time of the job section and you did not find in his file, or her file a notification specifically cancelling annual leave, what would you have done in that circumstance?

Mr. **Yokley**. Well, generally speaking, if all of the required information was included in a folder, it would be passed on as completed. For example, if a person was initially carried on annual leave, we will say that the person was listed as annual leave, and there was some indication on the watch schedule that it had been cancelled, and a note from the supervisor with the date and time of contact of the employee cancelling the annual leave, then I would pass that record on as being completed.

Mr. **Oberstar**. Supposing that it did not have that notification and verification, notification specifically to the controller that her or his annual leave was cancelled, that you did not find that documentation, what then would you do?

Mr. **Yokley**. I would set that folder aside and run a check on it. By running a check, I would call the facility to determine whether or not the person's annual leave had indeed been cancelled.

Mr. **Oberstar**. To whom would you speak in the facility?

Mr. **Yokley**. We are speaking in general terms now, is that correct?

Mr. **Oberstar**. Yes.

Mr. **Yokley**. Okay. I would probably talk to—and here again, I would have to differentiate between the levels of facilities. If it were a Level I facility, which is a very small facility, I would probably talk to the facility manager. If it were a Level III or Level IV facility, I might not get directly to the facility manager, but I might talk to maybe the deputy manager.

Mr. **Oberstar**. And did you have occasion to make such calls in the course of your review of the files?

Mr. **Yokley**. Yes.

Mr. **Oberstar**. Were there many such files that needed to be made accurate?

Mr. **Yokley**. Well, there were files that needed correcting.

Mr. **Oberstar**. You would not characterize them as a great many or a few, you could not remember the exact number?

Mr. **Yokley**. I would probably say more than a few, but not a great many.

Mr. **Oberstar**. Did you have occasion during this time to talk to Mr. Robert Miller in the Chicago Center?

Mr. **Yokley**. Yes.

Mr. **Oberstar**. What was the nature of your conversation with him or conversations?

Mr. **Yokley**. I guess generally speaking that it was for the purpose of obtaining additional clarification. Maybe a document may have been missing, and I would request or basically to state the general problem with the folder.

Mr. **Oberstar**. When you had such conversations with Mr. Miller, do you recall that they were one on one telephone conversations or were there occasions when there were several of you in a telecon with a speaker phone talking to Mr. Miller.

Mr. **Yokley**. Primarily one on one.

Mr. **Oberstar**. Primarily one on one.

As a class of records, do you recall your impression of the four major centers under the jurisdiction of the Regional Office, Indianapolis, Minneapolis, Cleveland, and Chicago, whether any one of them had records that needed more correcting than others?

Mr. **Yokley**. I really do not recall.

Mr. **Oberstar**. Do you recall having to make more calls to say the Chicago Center than to any other center?

Mr. **Yokley**. Well, let me explain. It may have been that I worked on more records from Chicago. Because as I mentioned earlier, we just randomly went over and picked up a box. So it is possible that I worked on more of the folders from Chicago. So if that were the case, then I would probably have talked to Bob Miller more than anyone at the other three facilities.

Mr. **Oberstar**. But only because it is likely that you worked more on their records than on those of others?

Mr. **Yokley**. Probably.

Mr. **Oberstar**. When you asked Mr. Miller for documentation and verification of additional information about a particular controller, did you then receive that updated information from him and from the center, or did it go to somebody else for review?

Mr. **Yokley**. I would receive the information.

Mr. **Oberstar**. You would receive it.

If a document was not present in the file such as the one that I used in the case of specific notification to a controller that annual leave was cancelled, if you did not find documentation in the file and you received it from Mr. Miller, you then placed that in the file?

Mr. **Yokley**. Yes.

Mr. **Oberstar**. Did the files go from your office directly to the MSPB or did they go to some other office within the Regional Office?

Mr. **Yokley**. No, they remained primarily in the personnel department. When I say primarily, they stayed in labor relations until a complete review was made, and they went into another office where copies were made for MSPB, and for PATCO, and the representative, and the employee. So it went from labor relations to another holding room.

Mr. **Oberstar**. What were the time frames within which you reviewed controller records as those proposed for termination, the time frame subsequent to August 3rd? Was it mid-August, was it September, do you recall reviewing Chicago records as late as October?

Mr. **Yokley**. I do not recall, I really do not.

Mr. **Oberstar**. When did the review of controller records begin?

Mr. **Yokley**. Let me see. They gave employees seven days to respond. I would say that the review, and I am guessing, probably started roughly about three weeks to a month after the initial proposal letter was issued. We are not talking about a specific date where all of them were issued. From the time that the letter was issued to the time that we received the folder in the regional office.

Mr. **Oberstar**. Did those folders come in one at a time from, let us just take Chicago, did those folders come in one at a time or did you receive them in batches, a box of documents at a time from the Chicago Center?

Mr. **Yokley**. They came in batches, but not one complete batch from the facility. They came in as they completed, and as the oral replies were completed, and decision letters were issued. Then they would come in, maybe four or five boxes at a time probably.

Mr. OBERSTAR. Did you ever sign for any boxes, sign a receipt acknowledging?

Mr. YOKLEY. No.

Mr. OBERSTAR. Who would ordinarily have done that?

Mr. YOKLEY. As I recall, no one signed for the receipt of the boxes. They were brought in.

Mr. OBERSTAR. There were just brought in?

Mr. YOKLEY. Yes. Or mailed in from some of the distant facilities. And they were placed in kind of a holding pen.

Mr. OBERSTAR. No shipping clerk or anything of that nature signed?

Mr. YOKLEY. Not that I recall. I know that I did not personally sign for any.

Mr. OBERSTAR. You did not. I will withhold any further questions at this time. Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman.

Mr. Yokley, you were not responsible or put in charge for reviewing all of the Chicago cases?

Mr. YOKLEY. No.

Mr. CLINGER. Do you think that it may be possible that you reviewed a fairly high percentage of those cases though?

Mr. YOKLEY. Possibly, yes.

Mr. CLINGER. We have not had testimony that there were two major deliveries of controller cases from the Chicago Center, the second shipment being a revised, amended and updated version of what had been sent out in the first shipment.

Were you aware that there were in fact two separate shipments of essentially the same controller cases?

Mr. YOKLEY. Yes.

Mr. CLINGER. You were aware that there was a second shipment?

Mr. YOKLEY. Yes.

Mr. CLINGER. Were you aware of what that occurred?

Mr. YOKLEY. As I recall, I had made calls to Bob Miller, Mr. Miller at the Chicago Center, based on the records that I had reviewed from the Chicago Center. And I had requested certain documents, and certain verifications, and things of that nature. And I do not know how many contacts that I had made with Miller. But someone, and I say someone because I do not know who exactly made the decision, said since we are having to provide you with additional information and there might be some incomplete folders or things of that nature, we will make up another set of folders which will have all of the documents and information in them.

Mr. CLINGER. Okay. And this was conveyed to you by Mr. Miller?

Mr. YOKLEY. Yes.

[Pause.]

Mr. YOKLEY. I would like to use the term that I believe that it was Mr. Miller that I spoke to.

Mr. CLINGER. That you spoke to?

Mr. YOKLEY. Right.

Mr. CLINGER. You did indicate that you had spoken with Mr. Miller on a number of occasions requesting further information, or clarification, or additional data which were missing or confusing in the files that you were reviewing?

Mr. YOKLEY. Yes.

Mr. CLINGER. And that somewhere along the line in the process of these repeated contacts with Mr. Miller, you believe that he suggested that, well, since we are having to do this on a kind of piecemeal basis, maybe we just ought to review the whole thing and give it to you again?

Mr. YOKLEY. Let me clarify one thing. I am not saying that he made the decision on the spot.

Mr. CLINGER. Right.

Mr. YOKLEY. But I do recall that if not that date that at a later date that the decision was made, because it was conveyed to me from the facility.

Mr. CLINGER. From the Chicago Center?

Mr. YOKLEY. Yes.

Mr. CLINGER. That they were in fact doing a review of all of the files?

Mr. YOKLEY. That they were going to.

Mr. CLINGER. To do a review.

Mr. YOKLEY. Not a review, but to come up with completed.

Mr. CLINGER. Completed different files.

Mr. YOKLEY. Right.

Mr. CLINGER. So you were aware then that there was this second shipment and that there were duplicate files on each of the controllers?

Mr. YOKLEY. Well, let me clear up another thing. I was aware only because he told me. But cannot definitely say that I reviewed them. But I was aware that that was the process that they were going through, that they were going to go through.

Mr. CLINGER. And what did you understand to be the reason for their going through that process?

Mr. YOKLEY. I guess because I had made calls, several calls, to Mr. Miller asking for additional information and clarification. And I am assuming that was the reason.

Mr. CLINGER. Were you the only one as far as you know who was making those calls, or did the other three?

Mr. YOKLEY. I have no idea.

Mr. CLINGER. Thank you, Mr. Chairman.

Mr. OBERSTAR. Who were your associates as labor relations specialists?

Mr. YOKLEY. Mr. John Brunati, Ms. Mary DuBois, and Mr. William Feldman.

Mr. OBERSTAR. Thank you. The gentleman from Georgia.

Mr. ROWLAND of Georgia. Do you remember getting some of the same files back after the call from Mr. Miller that you had reviewed before, do you recall any particular individual file that you had seen before seeing them again?

Mr. YOKLEY. Okay. Are you saying that after I had approved them and passed them on?

Mr. ROWLAND of Georgia. That is right. After you learned that the files were going to be coming back again, do you recall?

Mr. YOKLEY. I really do not; no, sir.

Mr. Rowland of Georgia. There were just four of you doing the reviewing, as I understood you to say?

Mr. Yokley. Yes.

Mr. Rowland of Georgia. Was there any conversation between you and the other three members about these files that were coming back, did you all express any thoughts to one another about any changes that may have been in the files now compared to what they were originally?

Mr. Yokley. I do not recall engaging in any discussions with the other specialists about that.

Mr. Rowland of Georgia. You did not talk about it at all, you just went right ahead and reviewed the file again?

Mr. Yokley. Yes.

Mr. Rowland of Georgia. And no comments at all about this change made in this file or something of that nature?

Mr. Yokley. I do not recall making any such statement.

Mr. Rowland of Georgia. You feel that what precipitated the change then at least in part was the many shall I say inconsistencies or inaccuracies that prompted you to make the call to the facility in Chicago, and then the change was instituted, and I believe that you said that you did not have any idea that other people might have called about this.

Do you think that may been the reason for the decision to have a second shipment of files?

Mr. Yokley. I can only speculate, and say that I believe that is the reason, but whether that was the actual reason.

Mr. Rowland of Georgia. That is what you thought?

Mr. Yokley. That is what I thought.

Mr. Rowland of Georgia. What you thought at the time.

Did you have any procedure that you used in examining files? Did and the other specialists that were examining the files? Did you have any procedure that you would go through; for example, if you were to find that there was some inaccuracy there and you required additional information, did you have a procedure that you went through when you obtained the information about deleting that inaccurate information, was there a SOP that you went by?

Mr. Yokley. No. Essentially what we would do if we found an inconsistency in a folder, we would set that folder aside after making contact. When the information came in, we would pull the information question out and place it with the updated or corrected information.

Mr. Rowland of Georgia. You essentially corrected the file at that point then?

Mr. Yokley. Yes.

Mr. Rowland of Georgia. So there really was no reason since you had corrected the file at that point to suspect that it was necessary to go back and wholesale review all of the files?

Mr. Yokley. Not at that point; no, sir.

Mr. Rowland of Georgia. When did you finally come to the conclusion that the wholesale re-examination of these files was going to take place?

Mr. Yokley. Okay. When you say re-examination of the files, my understanding of the overall of the Great Lakes.

Mr. Rowland of Georgia. Yes.

Mr. **Yokley**. I do not recall exactly when that decision was made to reexamine all of the folders.

Mr. **Oberstar**. If the gentleman would yield.

What about a decision to review just the Chicago Center files, do you recall when, by whom, or how that occurred?

Mr. **Yokley**. I do not recall anyone instructing me to review just the Chicago Center's folders.

Mr. **Rowland** of Georgia. Did you get some sort of written communication that this was going to take place, or was it just a telephone conversation or an oral conversation?

Mr. **Yokley**. When you say when that this was going to take place, are we talking about the overall review of all of the folders?

Mr. **Rowland** of Georgia. The overall review.

Mr. **Yokley**. I personally did not see anything in writing. This was conveyed to me from someone else.

Mr. **Rowland** of Georgia. And you believe that it was Mr. Miller who conveyed this to you, as you stated earlier?

Mr. **Yokley**. Okay. I think that we are getting two phases confused, at least maybe I am. Later down the road, we got an order, and this was FAA-wide, that we were required to review all of the folders.

Are you specifically talking about a review of Chicago Center's folders or this overall review?

Mr. **Rowland** of Georgia. Well, I initially said that overall review.

Mr. **Yokley**. Right.

Mr. **Rowland** of Georgia. Now let us focus in a little bit on Chicago.

And I believe that earlier you had said that you believe that it was Mr. Miller who had told you that they were going to send the files back up again?

Mr. **Yokley**. Yes.

Mr. **Rowland** of Georgia. You said that you did not see anything in writing concerning that, and that the only reason that you had to believe that that was going to take place was because you believed Mr. Miller was the one who told you that it was going to take place?

Mr. **Yokley**. Yes.

Mr. **Rowland** of Georgia. Thank you, Mr. Chairman.

Mr. **Oberstar**. Picking up on the point that you raised with Mr. Rowland, when did the order come forth to review all files from FAA and from whom did that order come?

Mr. **Yokley**. When?

Mr. **Oberstar**. Yes.

Mr. **Yokley**. I do not know, I do not recall. And who gave the order, I do not recall.

Mr. **Oberstar**. Can you put it generally in a time frame; this was an order to review all files in the Region, is that correct?

Mr. **Yokley**. In the FAA, but we in the Region, right.

Mr. **Oberstar**. And was that in October or November, can you place it generally?

Mr. **Yokley**. This is a rough, rough guess.

Mr. **Oberstar**. Yes.

Mr. YOKLEY. I am thinking maybe November or near the end of the year.

Mr. OBERSTAR. Counsel, did you have some comment?

Mr. RANDALL. Mr. Chairman, I think that might have been the review that was mentioned earlier today in which Mr. Helms had asked that the cases be looked at throughout the country to make sure that where justifiable that cases be settled or that people be returned, that we had strong cases that we were proceeding with. And I do not recall whose testimony, but my recollection is that it was raised earlier this morning.

Mr. OBERSTAR. I think that was the testimony by Mr. Walker in which reference was made to Administrator Helms.

When that order came forth, what review did you conduct, you and the other labor relations specialists, what did you do by way of reviewing?

Mr. YOKLEY. I think that we essentially conducted the review the second time much like the first time. We looked at the proposal letter, because the proposal letter included the date or dates that the person did not show up for work. We compared that with the oral—well, we compared that with the sign-in roster and the watch schedule. And then we reviewed the oral reply, or in come cases the written reply. And we came up with the decision whether or not we felt that was a weak case or strong case.

If a person alleged in the oral reply, for example, that I was on sick leave at the time, or I was on annual leave, or I was training somewhere, then we might set that folder aside if we felt that there was some merit to the person's defense. Or if something did not mesh up. If a person said that they were on annual leave, and there may have been something in there that may have been approved, or sick leave or a doctor's statement, then we would set those aside.

Mr. OBERSTAR. I understand that.

Now in conducting this review, would you have reviewed the same files that you previously looked at or were you looking at an entirely different set of controller records from those that you reviewed the first time around?

Mr. YOKLEY. They were randomly reviewed again. So it is quite possible that we could have reviewed the second time files that we had reviewed the first time.

Mr. OBERSTAR. Counsel, do you have questions?

Mr. IMUS. Yes.

Mr. Yokley, what happened to the first shipment of Chicago records—you are aware that there was a second shipment—what did you do with the first shipment?

Mr. YOKLEY. I am not aware that—well, I did not see the second shipment. I knew that there was one, that a decision was made. And I do not recall what happened to the first records.

Mr. IMUS. Because if there was going to be a second shipment, then it would seem to me that you not take the time to go through the first shipment, is that correct?

Mr. YOKLEY. There is some logic to that, but I do not know if I thought about it at the time.

Mr. IMUS. Who besides you in the Regional Office knew that there was going to be a second shipment?

Mr. **Yokley**. I do not know. I mean this may have been communicated to one of the other specialists, but I do not know.

Mr. **Imus**. At the time that you found out that there was going to be a second shipment, you still had the boxes for the first shipment there. It would seem to me that you would tell at least your other labor relations specialists not to bother going through those files, because they are going to do it again.

Do you recall doing that?

Mr. **Yokley**. No.

Mr. **Imus**. Do you recall telling Mr. Shewfelt that we may have a problem in sending these to MSPB because we have not gotten the Chicago records yet, that they have to do it again?

Mr. **Yokley**. No.

Mr. **Imus**. If I could ask you to turn in the black notebook to a letter from a Chicago controller asking for information. Among the information that he is requesting are copies of all materials used to support the removal action. If you would turn the page, approximately three weeks later, there is a response from Mr. Shewfelt saying that we have a problem with our work load and we will get back to you in 30 days.

And if you would turn again, turn the page, approximately a month later, Mr. Shewfelt gets back and encloses the information which he attached. Not included in that information are any of the attendance records, the watch schedules, the sign-in logs, or time and attendance sheet. Do you know why that would be missing?

Mr. **Yokley**. Let me make sure that I understand what you are saying.

Are you saying that the information that the controller requested, why that was not included?

Mr. **Imus**. Right.

Mr. **Yokley**. I do not know that it was not.

Mr. **Imus**. Well, if you look back at the enclosure that Mr. Shewfelt wrote about and sent. Now everything in there is tabbed 1 through 4. What is missing, what no controller who made this request received, were the attendance records.

And I am asking if you know why that was excluded from their packet?

Mr. **Yokley**. When you say attendance records, are you making reference to T&As?

Mr. **Imus**. And the sign-in logs and the watch schedules, the three of them as a group.

Mr. **Yokley**. I was not aware of that. What I see here is that the documents or the record that we sent or that we indicate, and I am looking under where Mr. Shewfelt indicated that the record has been sent to PATCO. I see this as not going directly to the employee, but going to the PATCO office. Because most of these people had requested that PATCO represent them. And we were required to send the folders to the persons represented here. So they left the Regional Office, and went to the PATCO office. So I do not know what was included.

Mr. **Imus**. However, I would doubt if attendance records would be included in that. Because they would not have at the PATCO offices every controller's attendance records. I am saying the controllers requested copies of evidence relied upon. Mr. Shewfelt when he responded to that sent them a great deal of material. However, missing from that response were the attendance records, Tab 5, the actual evidence relied upon.

And I am asking you if you know why that was not included, why send Tabs 1 through 4 and not Tab 5?

Mr. YOKLEY. I do not know.

Mr. IMUS. Could it be possible that because the second shipment was in the process of being sent that the reason why it was not sent was because you had not gotten the complete file yet for Tab 5?

Mr. YOKLEY. I guess that is possible. I do not know.

Mr. IMUS. So it is possible then because Mr. Shewfelt wrote this letter that he knew that the Chicago Center was redoing these files and sending them up to you?

Mr. YOKLEY. I do not know.

Mr. OBERSTAR. Mr. Yokley, were copies of controller records for future use made in the regional office following your and other labor relations specialsts' review of those records?

Mr. YOKLEY. Yes, we did retain. We made five copies which one was retained in the regional office on all removed controllers.

Mr. OBERSTAR. When the regional office and you and other labor relations specialists received controller records, for each controller did you recieve just one set of records?

Mr. YOKLEY. As I recall.

Mr. OBERSTAR. From the facility?

Mr. YOKLEY. Yes, as I recall, just one set.

Mr. OBERSTAR. Just one set at a time?

Mr. YOKLEY. Yes.

Mr. OBERSTAR. Except for specific documentation requested in the case where you had questions about a particular controller, were other records on that controller sent up to you, another complete set randomly from any other Center, any Center other than Chicago?

Mr. YOKLEY. I do not understand your question.

Mr. OBERSTAR. After you had reviewed Controller X's records and you had satisfied yourself that you had either received all of the information or all of the information needed was contained in that file and you concluded your review, subsequent to that, subsequent to the conclusion of your review, did you receive any further documentation or another complete set of records on any particular controller either individually or as a group?

Mr. YOKLEY. Not that I recall.

Mr. OBERSTAR. Now as for Chicago, did you receive from the Chicago Center a second set of documents on any controller?

Mr. YOKLEY. I do not recall.

Mr. OBERSTAR. But you do know that you reviewed records of controllers from Chicago Center?

Mr. YOKLEY. Yes.

Mr. GOEBEL. Mr. Yokley, as you conducted your review of the controller files, did you consult with Mr. Shewfelt at all?

Mr. YOKLEY. On review of records, no.

Mr. GOEBEL. Generally?

Mr. YOKLEY. No.

Mr. Goebel. You had no contact with him in reviewing records generally including any discussions of, well, we found some discrepancies in this particular facility or this facility appears to have done a poorer job or a better job or record keeping than any other?

Mr. Yokley. We met from time to time just to discuss general issues or general instructions, but not to really discuss records or the review that we had made.

Mr. Goebel. Did you discuss with him at all then your review of Chicago Center cases, for example?

Mr. Yokley. Not that I recall.

Mr. Goebel. Do you know if he, Mr. Shewfelt, had the opportunity to review any of the controller case files?

Mr. Yokley. You mean during this initial review?

Mr. Goebel. Yes.

Mr. Yokley. No.

Mr. Goebel. You do not know?

Mr. Yokley. I do not think he did.

Mr. Goebel. Or he did not?

Mr. Yokley. I do not think he did.

Mr. Goebel. Okay. Turning again then to your conservation, or what you recall to be your conversation with Mr. Miller, and it may have been someone else from the Chicago Center, concerning the decision to redo the Chicago Center files, do you recall when that conversation may have taken place? Would it have been late September or early October?

Mr. Yokley. I am thinking probably and I am guessing October. The reason that I am thinking October is because I think that the oral replies had started. So it means that they would have issued decision letters shortly thereafter. So I would guess sometime in October.

Mr. Goebel. At that time, did you formulate any impression as to whether the decision to reexamine and resubmit those controller files originated at the Chicago Center or perhaps the direction came from some other source?

Mr. Yokley. I was of the impression that it came from the Chicago Center.

Mr. Oberstar. The gentleman from Georgia.

Mr. Rowland of Georgia. About how long does it take the files to go from your review to MSPB?

Mr. Yokley. Probably about two weeks, two weeks or three weeks.

Mr. Rowland of Georgia. Two to three, from the time you finished with it until it went to MSPB?

Mr. Yokley. Yes.

Mr. Rowland of Georgia. And as I understand it, you first began to receive the file from the Chicago Center sometime between September 16th and October 1st?

Mr. Yokley. I may have mentioned probably October.

Mr. Rowland of Georgia. And then the second set of files that came up started coming in the middle of October into the first part of November?

Mr. Yokley. Around October, yes.

Mr. Rowland of Georgia. Do you think that by the time that you started getting the second group of files that the first ones that you had already reviewed had gone to MSPB?

Mr. Yokley. I do not think that we would have probably sent any folders that had documents missing. All of the folders——

Mr. Rowland of Georgia. All right, what about the ones that did not have the documents missing,

Mr. Yokley. That did have documents missing?

Mr. Rowland of Georgia. No, that did not have documents missing, but they were inaccurate?

Mr. Yokley. I would guess that they would be set aside.

Mr. Rowland of Georgia. Now there is a question as to what happened to those files that came up in the first shipment.

So you say that they were sat aside?

Mr. Yokley. Yes.

Mr. Rowland of Georgia. And what happened to those files after you began to receive the second ones, where did you set them aside, did you put them in a room somewhere or that happened to them?

Mr. Yokley. We probably put them on a credenza somewhere.

They did not go—I mean we would not send incomplete files forward to go to MSPB.

Mr. Rowland of Georgia. Or inaccurate files?

Mr. Yokley. Or inaccurate files, that is correct.

Mr. Rowland of Georgia. They were set aside, but you do not know, on a credenza somewhere, you just do not know what happened to those?

Mr. Yokley. The decision was made that they were going to correct the folders at the facility and send them back to us. I do not know what happened to them.

Mr. Rowland of Georgia. Well, they did not go up to MSPB, I guess that we have pretty well established that.

Mr. Yokley. Right.

Mr. Rowland of Georgia. You said that they did not go up there.

Mr. Yokley. Right.

Mr. Rowland of Georgia. Well, they could not have just disappeared. It was something.

Mr. Oberstar. If the gentleman would yield.

At that particular point in the process, had you and the other specialists concluded review of what we understand to be the first set of Chicago Center documents?

Mr. Yokley. The ones that we had received up to that point, yes.

Mr. Oberstar. All right. There may have been others that you had not yet received when this notification came about that there was going to be a complete set of Chicago Center documents sent up.

Mr. Yokley. Let me make some corrections about the term a complete set. They were making copies of every folder on each person who had been removed, okay. Some of those folders were fine and we sent them forward. It was just a matter of looking at a folder and determining if it were okay. If everything was okay in that folder, then that folder would go forward. But it is just the folders that had certain documents missing or maybe a shift did not correspond with the sign-in or something like that. Those we would set aside. If I was giving you that impression, I apologize, that all the folders were duplicated.

Mr. **Oberstar**. How has the Chicago Center to know which were the ones that were set aside and needed additional documentation?

Mr. **Yokley**. We would call, we being the specialists.

Mr. **Oberstar**. The specialists.

Mr. **Yokley**. Yes, that had reviewed that particular folder.

Mr. **Oberstar**. I yield back to the gentleman.

Mr. **Rowland** of Georgia. Mr. Chairman, I am still puzzled about what happened to those files. I really do not know any additional questions to ask to pursue that matter at this point.

Mr. **Oberstar**. The Chicago Center has said that they sent, and we know that fourteen additional boxes of documents were sent up that represented a second set of records on Chicago Center controllers. And we are trying to ascertain the facts here and the accuracy.

Your understanding is that it was not a complete set of all of the controllers, but only those about whom questions were raised and with whom you had specifically raised questions with Chicago or about whom you raised questions with the Chicago Center.

Our understanding is that all of the records for all of the controllers were completely redone and a second complete set shipped up to the Great Lakes Region.

Mr. **Yokley**. Let me give you some additional information. I think that this might clear things up.

Mr. **Oberstar**. Okay.

Mr. **Yokley**. Because we had to come up with five folders on each file, the initial decision, or in a discussion the initial decision was to have the facilities to make up five copies on each employee's folder. Because two had to go to MSPB, one to the rep, one remained in the regional office, and there was an extra, and I do not recall what we did with the fifth one. The initial decision was to have the facilities make up five copies.

Mr. **Clinger**. Mr. Chairman, may I just interrupt at this point.

Mr. **Oberstar**. Yes.

Mr. **Clinger**. And ask why you would have them copied before you reivewed them to determine if they were accurate, et cetera?

Mr. **Yokley**. A lot of things went on because the magnitude of work was something that we had never been hit with. So we were making a few mistakes and going back and trying to get a procedure where it was working smoothly. Because some of the smaller facilities did not have the resources to go out and lease copying machines and they did not have the personnel to make copies, another decision was made that we in the regional office would lease copying equipment. We had resources, because we would allow for overtime payment for people to make copies.

So the decision was made that okay, field facilities, send your packages in, and we will make the copies here. And I am not certain, but I think that this may have gotten to some of the facilities over an air traffic telecon that they would be required to make the five copies. So some of the facilities probably did make extra sets and sent them in.

Mr. **Imus**. Excuse me, Mr. Yokley. Could you turn to Exhibit 13 in that same book in front of you. Your testimony earlier this afternoon seemed to indicate that an explanation of what would have been in those packages was detailed in Bob Miller's conversation with you.

Is that your testimony, I just want to be real clear on that?

Mr. YOKLEY. Yes. That on those folders that I had set aside that had documents missing I guess after a certain number of calls that a decision was made at the facility, yes, to make up a complete package of those.

Mr. IMUS. However, there are 463 names there.

So did you set aside 463 folders which is virtually everbody in the Chicago Center?

Mr. YOKLEY. No. As I stated, there were not inaccuracies in all of the folders. Many of the folders went through as being complete with no problems. But the ones that had documents missing, those were set aside.

Mr. IMUS. But the Chicago Center still sent up those folders?

Mr. YOKLEY. I do not know.

Mr. IMUS. Well, I mean the document in front of you will show fourteen boxes being sent from October 16th to November 7th.

Mr. YOKLEY. I guess my testimony is——

Mr. IMUS. The second shipment.

Mr. YOKLEY. My testimony is that he may have sent them in, but I do not recall seeing a second shipment coming in.

Mr. IMUS. If you could look at those three documents right in front of you. The subcommittee requested MSPB to make copies of those, and there are three controllers' adverse action files. And under Tab 5, the subcommittee found two sets of Tab 5.

Mr. YOKLEY. It is not tabbed.

Mr. IMUS. If you would flip the page just one more page. MSPB put that together, and that would be Tab 5. The subcommittee staff found in there two different versions of what are supposed to be the same attendance records, the same sign-in logs, and watch schedules, and time and attendance sheets.

In the first packet of information, the documents are internally inconsistent. They do not match. The second set, they match. Changes were made on the sign-in log, so it now matches the watch schedule. And changes were made on the T&A, so you now have all three documents matching.

Could it be that the second packet was what was sent up in the second file, in the second shipment?

Mr. YOKLEY. I guess that is possible. I do not know.

Mr. IMUS. How could you explain, since you put these together for the MSPB, how could you explain the presence of those two different duplicate sets of sign-in logs, one having differences and the other being consistent?

Mr. YOKLEY. Okay. I did not assemble the packages for MSPB. The packages were assembled by clericals who were on overtime. I am saying assembled. I did not assemble the packages.

Mr. OBERSTAR. Was that the case with the other specialists as well?

Mr. YOKLEY. Yes, I believe so. I mean to say that Joe Yokley was responsible for assembling all of Chicago's records, that is not true.

Mr. IMUS. Do you have any theories about how that could happen, how there could be one set of sign-in logs, time and attendance sheets, and watch schedules that are inconsistent and then have another set of records of the very same documents with a few changes made to be consistent, you know, that are consistent?

Mr. **Yokley**. Okay. I guess that I do not have any theories, unless there are two sets in there.

Mr. **Imus**. Had you reviewed the first set and found documents to be inconsistent, was that something that you would have called Bob Miller about and said that we have inconsisitencies here?

Mr. **Yokley**. Yes.

Mr. **Imus**. And then those inconsistencies would be changed and sent back to you?

Mr. **Yokley**. Would be corrected.

Mr. **Rowland** of Georgia. Let me ask you a question.

You indicated earlier that if there were no inaccuracies, then the file was sent on up to MSPB?

Mr. **Yokley**. Well, it would go to another room for copying. And then from there, it would go to MSPB. Yes, sir.

Mr. **Rowland** of Georgia. Can you recall offhand generally about how many of them went on through like that, what percentage of them went on through just compared to those that you had to pull aside to wait for additional information?

Mr. **Yokley**. I would need to guess. Because at the time of review, I did not see where the Chicago Center had any more problems than any other facility. I was just reviewing a record, and either putting a stamp of approval saying it is okay, or setting it aside and calling the facility. So I really did not keep track of the number of inconsistencies coming out of the Chicago Center as opposed to the Indianapolis Center or any of the others.

Mr. **Rowland** of Georgia. You would not have any idea, would you say half of them were okay to send on up, or a third of them, or two-thirds of them? Let's have some idea about it.

Mr. **Yokley**. I really do not know. If you want me to really speculate, I will do that.

Mr. **Rowland** of Georgia. No, I do not want you to say something that you do not have a good idea about.

Mr. **Yokley**. I was reviewing records from probably just about every facility. It was not significant at that particular time. I was interested in getting the records together, and making sure that all of the required information was included in the records. That was really my only concern at that point.

Mr. **Rowland** of Georgia. So you just do not recall even generally how many of the records you may have just set aside or how many of them went on up?

Mr. **Yokley**. I can say that I believe that the majority of them were okay.

Mr. **Rowland** of Georgia. The majority of them were okay?

Mr. **Yokley**. Yes.

Mr. **Rowland** of Georgia. But out of the Chicago Center, this is a list of all of the controllers out of the Center. And looking over this, the T&As alone, there must be 80 to 85 percent of them that were amended in October. That is when most of the amendments took place, in early to mid-October. So that would mean that there would be a large number of records coming up in that second shipment, because of the inaccuracies in the first shipment.

Do you agree?

Mr. **Yokley**. If you say that it is 80 percent, yes.

Mr. **Rowland** of Georgia. Well, let me have him look at that.

Mr. **Yokley**. I do not doubt what you are saying. If you are saying that it is 80 percent.

Mr. **Hedrick**. This is based on a tabulation of the T&A amendments that were submitted for the record which are all dated. And it reflects a high percentage. For the first pay period, for the pay period 17, our count is 192 amended T&As of 460-some controllers. And that is for the key pay period, the first pay period of the strike, pay period 17. And then there were a significant number of amended T&As in pay period 18 and 19 also. The net total of amended T&As is approximately the number of controllers. That is the extent of the amended T&A process.

Mr. **Oberstar**. Mr. Yokley, let me recap for the purpose of being sure that we are accurate in your testimony. Early in response to one of my questions, you said that you do recall that there would be a shipment of controller records from the Chicago Center saying, "Mr. Miller said we will make up a second set of documents for you." All right. That may not be exact, "But we will make up a second set of documents," meaning for you.

Later on, you said, well, there may have been a misunderstanding, that I did not mean a complete set of all of the controller files from the Chicago Center, but only those upon which correction was needed, is that right?

Mr. **Yokley**. Can I clarify something?

Mr. **Oberstar**. Yes.

Mr. **Yokley**. Let me just further explain something. The records that I had sent forward up to the point where a decision was made at the Center, my understanding was that the ones that had gone forward where he had brought documents in, as far as I was concerned, those were okay. I sent those forward, okay. Now if they had decided at the Center, it was not really explained, they just said we are going to make up another set of folders.

But as far as I was concerned, the information that he had sent into me that I had called on for those records, as far as I was concerned, those records were okay. So if a second set came in, it would not have had any bearing on the records that I had okayed and sent forward. That is why I questioned when I said the majority of them were okay.

Mr. **Oberstar**. The majority of the ones that you reviewed were okay, and they were sent on up for further action?

Mr. **Yokley**. Yes.

Mr. **Oberstar**. On that minority of records which were not okay, you requested further information from the Chicago Center, and they were to supply that information, and those records you set aside on a credenza or some other place in your office to be held until that further documentation was received, correct?

Mr. **Yokley**. The ones that I had called about.

Mr. **Oberstar**. The ones you called about?

Mr. **Yokley**. Yes.

Mr. **Oberstar**. When you received that further information, you completed the file and sent it forward, is that right?

Mr. **Yokley**. Yes. If it was okay.

Mr. **Oberstar**. If it met the test.

Mr. **Yokley**. Can I say one other thing?

Mr. **Oberstar**. Yes.

Mr. **Yokley**. I was not the only one reviewing the Chicago Center records.

Mr. **Oberstar**. Yes. I understand that, I understand that.

Mr. **Yokley**. Okay.

Mr. **Oberstar**. You made that very clear, that there were several who were doing that, and that is part of the record. The puzzlement for us is that we have gone through 463 controller records. In every one of them, there was a first shipment, usually in September, almost without exception September. And in every one of them, there was a second shipment, every one, usually in October and some shipped in November.

But you do not recall receiving any duplication of records except the information that you had specifically requested on those files that you withheld for further review?

Mr. **Yokley**. As I recall, that is correct.

Mr. **Oberstar**. That is your statement exactly. All right, thank you. Counsel Goebel.

Mr. **Goebel**. Let me follow up with the Chairman's line of questioning to further illuminate why it is that the subcommittee is having some difficulty with your testimony. As we understand it, you are aware that a second shipment of documents was supposed to come from the Chicago Center to the Great Lakes Region Office. Bob Miller or someone with whom you had a telephone conversation indicated that that would be done.

Second, that you conveyed this information to no one else at the Regional Office including others whose review of Chicago Center records would have been ongoing.

Third, if that review continued, and controller case files were found to be acceptable and they were passed along to the persons who were doing the duplicating, that the five additional copies of each one of those records would have been duplicated, and presumably set aside somewhere within the regional office for holding prior to transmittal to the Merit Systems Protection Board.

Following that or during this same time period roughly, a second shipment of documents from the Chicago Center, which have been identified previously to us as being complete case files for all of the controllers who were removed, began to show up at the Great Lakes Regional Office.

Presumably then without, as you indicate, any particular cognizance that those were a second shipment of records, they were thrown into the mass of records that continued to be reviewed by the labor relations specialist and/or others, for example, Wes Walker. And that review was conducted at which time when the reviewer was satisfied that the records were accurate and consistent the documents were then passed along to whomever was doing the duplicating, and the five additional sets of that set of records were made, and then set aside also for holding prior to transmittal to the Merit Systems Protection Board.

Does it not strike you as likely, given the fact that a review continued to be done pending the forwarding of a second shipment of documents, and that a second review and duplication was made after the entire new set of records was sent forward that at some point in time someone, either whomever was doing the Xeroxing or whoever was doing the reviewing, had to end up with multiple copies of the same controller's file with no guidance from any source as to which was to be the set to go to the Merit Systems Protection Board? How was that resolved?

Mr. YOKLEY. I do not recall, I really do not. I cannot picture that we would send two different folders on each employee. I just cannot see that. Because MSPB would probably have said you are sending me two folders.

Mr. GOEBEL. I cannot either, but would you not agree that that is a logical scenario had things unfolded as you described them?

Mr. YOKLEY. Okay. The only thing that I can think of is maybe I told someone or maybe it did get out to all of the other specialists, because only one folder went to MSPB.

Mr. GOEBEL. I think that we recognize that.

Mr. YOKLEY. But what the process was, I do not know. I just do not recall.

Mr. OBERSTAR. If counsel would yield. In the case of Chicago Center controllers, the folder that went to MSPB was always the complete file, a clean file, did not reflect any of the inconsistencies, and problems and so forth that we find in shipment one of those files.

Mr. YOKLEY. And the only logical explanation that I can offer at this time is apparently someone was briefed that Chicago Center was bringing a new set of folders in. I do not recall having said anything to Dick Shewfelt or any other specialist. I may have. Obviously, it was caught somewhere because only one set went to MSPB.

Mr. OBERSTAR. Thank you, Mr. Yokley, for your testimony. We appreciate very much the effort that you have made to recall as completely as possible and as thoroughly as you can the events that occurred.

Mr. YOKLEY. Thank you.

Mr. OBERSTAR. Our next witness will be Mr. Jack Brunati.

[Recess.]

Mr. OBERSTAR. You have already been sworn in, so there is no need to swear you in a second time. The Chair understands, Mr. Yokley, that you wish to provide additional information supplementing your previous testimony. Please proceed.

Mr. YOKLEY. Okay. First of all, I would like to apologize to the committee for not recalling what happened six years ago. But going through discussions and thinking about things, there is some recall. And the question was asked about the process used in replacing the original folders with the second set that came in.

And I remember now, and my testimony still stands that I set these folders aside, and when the information came in, they went forward to this holding room. But now I remember what happened once those folders went to the holding room. Apparently, and here again as I stated before, the other specialists or someone must have gotten the word to hold Chicago Center folders. Because I recall replacing, pulling some of the old folders out and replacing them with new folders.

Mr. Imus. Would you have done that for every case, Bob Miller sends up 450 folders in a second shipment, would you have done that across the board then?

Mr. Yokley. All I can think of is that those were all of the folders that were being held aside in this room.

Mr. Imus. So all of the Chicago Center controller cases files were being held in a room, is that correct?

Mr. Yokley. Yes. That is the only logical explanation that I could give you for these folders being held aside in this room.

Mr. Imus. And that perhaps explains why in Mr Shewfelt's response to the controllers, why they did not receive Tab 5, because the second shipment of documents occurred in mid to late October or early November. He responded to their letter on October 23rd.

So is it fair to assume that the reason why Tab 5 was not included was because it was still in the holding pen?

Mr. Yokley. Yes, I guess that is the logical explanation. I do not know.

Mr. Rowland of Georgia. Could I ask a question?

Mr. Oberstar. The gentleman from Georgia, please go ahead.

Mr. Rowland of Georgia. Then when the folders were pulled, what happened to them?

Mr. Yokley. I do not know if they were shredded or what. But you would pull, at least I would pull the older folders out and replace it with the new folder. And I just put them in a box, and I do not know what happened.

Mr. Rowland of Georgia. You put them in a box?

Mr. Yokley. Yes.

Mr. Rowland of Georgia. And you have no idea what happened to them after that?

Mr. Yokley. No.

Mr. Rowland of Georgia. Who would be responsible for dealing with that? There must be some kind of procedure to deal with the disposal of old records like that.

Who would be in charge of dealing with that, do you know?

Mr. Yokley. Back then, I do not know. I mean it could have been assigned to the clericals that were in there. You would set a group of boxes aside, and said when you have time shred these or destroy them, or whichever process they would use to get rid of them.

Mr. Rowland of Georgia. They probably shredded them?

Mr. Yokley. Well, I do not know. I am just speculating, but I do not know. I am just saying that that is a possibility.

Mr. Rowland of Georgia. Thank you, Mr. Chairman.

Mr. Oberstar. In your opening remarks, you indicated to the committee that Mr. Miller had said, "We will make up a second set of documents." Now you have clarified that the second set was in fact received, and you went about the process of updating the files, to use the standard term within the office.

Is it possible in that process that you may not have removed inaccurate files and put in the amended file, in one, or two, or three instances not pulled the inaccurate information? Is that possible? That would explain the inconsistency of those files that you have in front of you?

Mr. Yokley. Okay. As I recall, Mr. Oberstar, the initial folders were placed in a large envelope, each employee's folder was in an envelope. And when the new set of folders came in, they were also in envelopes. So it was a matter of pulling one envelope out and replacing it with another.

Mr. **Oberstar**. I see.

Mr. **Clinger**. But that may not have been done in some cases?

Mr. **Yokley**. It is possible.

Mr. **Clinger**. So both envelopes would have gone forward to MSPB?

Mr. **Yokley**. I am saying that it is possible.

Mr. **Clinger**. It is possible, all right.

Mr. **Oberstar**. To the best of your recollection, did the initiative for sending the second set of documents come from the Chicago Center, or could it have come from the collective judgment based on the telecons that occurred between the Region and Chicago, or could it have come through a directive from higher authority in the Region?

Mr. **Yokley**. That is possible. But the way that I got it, it was from the Center. And if they had gotten instructions from someone else, I had no knowledge of that.

Mr. **Oberstar**. Now you knew that there was a second set of files coming.

Did Mr. Shewfelt know that as well?

Mr. **Yokley**. I would have to say that I do not know.

Mr. **Oberstar**. Did Mr. Shewfelt know that you and other specialists were holding aside in a separate holding cell the Chicago Center files?

Mr. **Yokley**. I do not know. I did not tell him.

Mr. **Oberstar**. You do not know then whether he was informed of the separate treatment given these Chicago files?

Mr. **Yokley**. No, I do not know.

Mr. **Oberstar**. You do not know that.

Counsel, do you have questions?

Mr. **Imus**. No.

Mr. **Oberstar**. Thank you very much for coming back and completing the record. We appreciate that very much.

Mr. **Yokley**. Okay. Thank you.

[Witness excused.]

Mr. **Oberstar**. Mr. Brunati, we appreciate you being here. If you would raise your right hand.

[Witness sworn.]

TESTIMONY OF JACK B. BRUNATI, LABOR RELATIONS SPECIALIST, FEDERAL AVIATION ADMINISTRATION

Mr. **Oberstar**. You are aware that the purpose of the hearing today is to ascertain facts about the treatment of air traffic controller records in the period of time following the August 3, 1981 job action. The subcommittee has taken testimony in previous hearings, and in subcommittee staff meetings and interviews with several participants in that process. And the purpose today is to try to close the gaps in our understanding and verify additional information about the procedure.

Could you then for the purpose of our hearing identify for us your position with the FAA in the period between August 3, 1981 and December of that year, and your current position with the FAA?

Mr. **Brunati**. My position at that time was labor relations specialist, and that is my current position.

Mr. **Oberstar**. You were working in the Great Lakes Regional Office at that time?

Mr. **Brunati**. Yes.

Mr. **Oberstar**. And could you tell us which facilities came under your jurisdiction as you reviewed documents of controller files?

Mr. **Brunati**. When we first started the review process, we all worked all facilities. If a set of files came in, whoever had the time to review them would do that. Eventually, we became more specialized especially with the bigger facilities like the centers. We felt it was more efficient if once you became familiar with the way that a particular center operated in terms of their watch schedules, and record keeping, and so on that it would be better for particular people to specialize in those facilities. So we began to do that fairly early in the game, I would say.

Mr. **Oberstar**. Was this August or September?

Mr. **Brunati**. That was probably sometime in August or early September. The only larger facility that I specifically remember working on is Cleveland Center. And we also worked on, I remember specifically working on another center, one of the smaller ones, either Indianapolis or Minneapolis, I do not recall which.

Mr. **Oberstar**. Because of that specialization, is it likely that a labor relations specialist would be able to recognize a file of a particular controller that he or she had reviewed at one stage say August, and then if that file should reappear be able to identify that file a second time?

Mr. **Brunati**. That is possible.

Mr. **Oberstar**. Could you describe for us the procedure that you followed on reviewing controller files. You looked at a particular controller's file, a controller who had been cited and was proposed for termination.

When you received that controller's file, what steps did you go through, what information did you review, what were you looking for, and what did you do when you completed review of that file, what did you do with the file when you completed review of it?

Mr. **Brunati**. Okay. Basically, we would look probably first at the proposed letter of removal to be sure that the letter was prepared properly, and then look at the decision letter, and make sure that those two letters were consistent. Then we would look at the various other records in the file supporting the removal action. The key ones would be the watch schedules, the time and attendance records, the sign-in logs and so forth, to make sure that all of the dates, and all of the particular schedules, the RDOs, particular shifts that the person worked and that sort of thing were all consistent from one document to another.

And if we were to identify an error, we would then call a facility and tell them of the error and ask them what is the problem here, which of these documents is correct. They then would inform us of that and send us the necessary corrected documents. And we would include that in the file, and that would pretty much conclude that particular file, the review of that particular file.

Mr. OBERSTAR. You may have found in a particular controller's record an inaccuracy or something that was not complete, and by not complete I mean where the proposed letter of removal would not have with it the verification of controller status—let us assume that a controller was listed for annual leave for the period of August 1 through 8, and there was a proposed letter of removal but not verification of status, whether in fact that controller had been specifically and individually notified that annual leave had been cancelled, what would you do in that case? I am certain that you ran across such cases.

Mr. BRUNATI. Where the employee was on annual leave and was not specifically advised that it was cancelled.

Mr. OBERSTAR. And that the employee was proposed for termination.

Mr. BRUNATI. More than likely, we would contact the facility and ask them if they had that verification. If they did, we would include it. If they did not, possibly then that would be the type of case we would consider restoring. There were a few cases where we felt that the particular case was not supportable under the circumstances, and we restored the people. It is possible that that could fall into that category.

Mr. OBERSTAR. Now how did you receive these records, in what manner were they presented to you and the other labor relations specialists?

Mr. BRUNATI. Generally, they just came in a box, in a manila folder of some sort.

Mr. OBERSTAR. From where?

Mr. BRUNATI. From the facility, directly from the facility to our branch, and that is it. The various documents would be in the file not attached. Normally, I think that they were all in there in looseleaf fashion.

Mr. OBERSTAR. Did you or other specialists receive boxes of these controller files directly?

Mr. BRUNATI. Well, it would come to the branch first.

Mr. OBERSTAR. Generally, it would come to the branch.

Mr. BRUNATI. It always came to the branch. Well, the initial box or boxes of files would come to the branch. It would not come to any particular specialist.

Mr. OBERSTAR. Do you recall receiving some boxes of documents from the Chicago Center from one of the personnel from that center?

Mr. BRUNATI. No.

Mr. OBERSTAR. Earlier today, Mr. Peterson testified that he delivered three boxes of records to you. He said earlier the end of the first week of October, and then he said that it was probably in September.

Do you recall meeting with Mr. Peterson and receiving three boxes of documents?

Mr. BRUNATI. No, I do not.

Mr. OBERSTAR. Is it possible that you would have received them from him?

Mr. BRUNATI. Yes, it is quite possible.

Mr. OBERSTAR. Do you know Mr. Peterson?

Mr. BRUNATI. Oh, very well, yes.

Mr. **Oberstar**. And he was working in the Chicago Center at the time, correct?

Mr. **Brunati**. Well, it depends on what you mean at the time. Because I do not believe that he started until after the strike was well in progress.

Mr. **Oberstar**. And that is the time period that I referred to earlier, between August 3rd, the time of the job action, and the end of that year. Now he testified that his period of employ was sometime in mid-August or September to the first part of October.

Mr. **Brunati**. I was thinking that he started a little bit later than that, but that is quite possible. Because I think that he was involved with some of the hearings, the oral reply hearings.

Mr. **Oberstar**. Do you recall whether he worked through the month of October?

Mr. **Brunati**. Oh, yes, he worked beyond that point.

Mr. **Oberstar**. Beyond the first week of October?

Mr. **Brunati**. Yes.

Mr. **Oberstar**. Would he have delivered documents to you in October? I want you to think back carefully now as to when he might have delivered these boxes of documents.

Mr. **Brunati**. Well, I do not remember him delivering any boxes to me.

Mr. **Oberstar**. He testified under oath that he delivered three boxes of documents.

Mr. **Brunati**. Yes, I understand that. I do not recall.

Mr. **Oberstar**. And you do not recall receiving them?

Mr. **Brunati**. No.

Mr. **Oberstar**. With respect to the Chicago Center, did you work on Chicago Center documents at all?

Mr. **Brunati**. I do not remember specifically working on Chicago Center documents.

Mr. **Oberstar**. You testified a moment ago that you worked principally on Minneapolis Center documents and perhaps——

Mr. **Brunati**. Well, it is Cleveland Center that I remember specifically.

Mr. **Oberstar**. Oh, Cleveland Center.

Mr. **Brunati**. And then I worked on one other center. It was either one of the two smaller centers, Indianapolis or Minneapolis.

Mr. **Oberstar**. Who specialized then on Chicago Center documents?

Mr. **Brunati**. I believe that it was Mary and Joe, Mary DuBois and Joe Yokley.

Mr. **Oberstar**. Are you aware of any conversations or any discussions about a second set of documents to be received from Chicago Center?

Mr. **Brunati**. Back then?

Mr. **Oberstar**. Yes.

Mr. **Brunati**. I do not recall that.

Mr. **Oberstar**. In October, or in November possibly?

Mr. **Brunati**. I do not recall that specifically, no.

Mr. **Oberstar**. Do you recall any discussions in the office about the quality of the records reviewed from the various facilities? I am sure that there were discussions.

Mr. **Brunati**. Yes.

Mr. OBERSTAR. Among the labor management specialists.

Mr. BRUNATI. Yes. I think that it was pretty well recognized that the Chicago Center had problems with documents. There were lots of mistakes.

Mr. OBERSTAR. Do you recall any discussions about the types of mistakes that occurred in their files?

Mr. BRUNATI. The kinds of things that I was mentioning earlier, inconsistencies between one document and other. The watch schedule might say that the man was scheduled for the 3:00 shift on a Monday, and his time and attendance record might show that he came in at 8:00 or something like that, you know, and the sign-in log might show something different, that sort of thing.

Mr. OBERSTAR. Did you in reviewing Cleveland files find any such widespread discrepancies or were they only on a case by case basis?

Mr. BRUNATI. I do not believe that it was as widespread. There were, you know, a few problems. But as I understand it, it was more widespread at the Chicago Center.

Mr. CLINGER. I have no questions, Mr. Chairman.

Mr. OBERSTAR. The gentleman from Georgia.

Mr. ROWLAND of Georgia. I have no questions, Mr. Chairman.

Mr. OBERSTAR. Counsel.

Mr. IMUS. Yes, I just have a few.

In terms of your work as a labor relations specialist, how often would you deal with Mr. Shewfelt, your supervisor? On a daily basis?

Mr. BRUNATI. It was on a daily basis. We were in the branch together.

Mr. IMUS. So he kept in pretty close contact with you then about how the work was progressing as you were trying to meet the MSPB deadlines and what have you?

Mr. BRUNATI. Yes.

Mr. IMUS. So if you were aware that Chicago Center records had problems of the magnitude that you discussed, then is it safe to assume that Mr. Shewfelt would have known that?

Mr. BRUNATI. I do not know for sure.

Mr. IMUS. Okay. I understand that you cannot tell me for sure what Mr. Shewfelt may or may not have known, but the type of manager that he was, and you just stated that he worked very closely with the labor relations specialists or at least with you, then let me ask this, would you find it unusual that he did not know of the problems in the Chicago Center records, would you find that to be unusual?

Mr. BRUNATI. Yes.

Mr. GOEBEL. Counsel, if I may.

Were you under the impression that he knew of the problems or the extent of the problems with the Chicago Center records?

Mr. BRUNATI. Yes.

Mr. IMUS. Did you ever hear of anybody in the Region tell the Chicago people that Mr. Peterson's employment was continued to go through October so that he could work with these records and bring them up to speed?

Mr. BRUNATI. No.

Mr. IMUS. Did you hear anything about that or know anything about that process?

Mr. BRUNATI. No, I did not.

Mr. OBERSTAR. The gentleman from Georgia.

Mr. ROWLAND of Georgia. Just one question. I want to be sure that I understood what you said about specializing. And by specializing, I suppose that you meant specializing in specific centers.

And you specialized in a couple of centers, and did not have very much to do with the Chicago Center records?

Mr. BRUNATI. That is correct.

Mr. ROWLAND of Georgia. I believe you said that Ms. DuBois did specialize in the Chicago Center?

Mr. BRUNATI. Yes.

Mr. ROWLAND of Georgia. I just wanted to be sure. That is what I understood you to say.

Mr. BRUNATI. Joe, I know for sure worked with the Chicago Center. And they were basically I think at that time working as a team. I am almost sure that Mary was pretty much involved, too.

Mr. ROWLAND of Georgia. Those two, okay.

Mr. OBERSTAR. Counsel.

Mr. GOEBEL. Following up on Mr. Rowland's question, was the decision to specialize one that the four labor relations specialists made among themselves as their review of the facility records unfolded, or was it something that was suggested or determined by Mr. Shewfelt or someone else in a higher position of authority?

Mr. BRUNATI. I think that it's something that we decided amongst ourselves. We could just see that as we were working with these things from day to day that once you familiarized yourself with a set of files that it was a lot quicker to go through the entire facility files. It always took a lot longer when you began with a new facility. It always took a lot longer to figure out just how their system worked. Because they were not all identical, and it was quite complicated. So it was just far more efficient to operate that way.

Mr. OBERSTAR. I think that completes our questioning.

Mr. BRUNATI. Okay.

Mr. OBERSTAR. Thank you very much for being with us today.

Mr. BRUNATI. Thank you.

[Witness excused.]

Mr. OBERSTAR. Our next witness will be Mr. Richard Shewfelt.

[Recess.]

Mr. OBERSTAR. Thank you for being with us again. And in accordance with committee procedures, if you would raise your right hand.

[Witness sworn.]

TESTIMONY OF RICHARD P. SHEWFELT, LABOR RELATIONS, FEDERAL AVIATION ADMINISTRATION

Mr. OBERSTAR. I think that you are aware that the purpose of the hearing is to complete the committee's record in reviewing the circumstances surrounding the termination of the air traffic controllers and the questions about records and the processing of records from the Chicago Center particularly.

My first question is, did the Chicago Center ever send the Great Lakes Region five copies of controller records for cases arising out of that facility?

Mr. SHEWFELT. Mr. Chairman, my recollection is that we made the copies of the files from the facilities in our office. We hired people and clerical people, and we rented a copying machine and did all of that. I do not recall that the Chicago Center or any other facilities made five sets of copies of their records.

Mr. OBERSTAR. In March, to be exact on March 11th, when you testified before the committee, at that time you agreed with Mr. Robert Miller's statement that five copies of such records had been submitted to the Regional Office.

Mr. SHEWFELT. Sir, if I said that, I must have been in error. I do not recall today that we made the copies.

Mr. OBERSTAR. We are not trying to trap you or put you on the spot. I am just trying to clarify this record. Because at that time, statements were made by Mr. Miller as a witness, who subsequently has corrected some statements. And we are just trying to make that hearing record accurate.

Mr. SHEWFELT. I understand. Frankly, sir, I do not have a good recollection of whether they did or not. And if I said at the time on March 11th that I agreed with that statement, I stand corrected.

Mr. OBERSTAR. Mr. Miller was in error and has acknowledged that, and we accept that testimony.

And so your statement would be that you have no recollection of five copies of records being sent from the Chicago Center?

Mr. SHEWFELT. Yes, sir, that is true.

Mr. OBERSTAR. That any such number of copies would have come out of the regional office to be sent to MSPB; is that right?

Mr. SHEWFELT. That is my recollection, sir. Yes, sir.

Mr. OBERSTAR. Now as case files on controllers came into the Region from the various facilities, how were they treated, what was the procedure that each labor relations specialist followed in processing those records, and can you identify for us the number of labor relations specialists under your direction at that time following the strike?

Mr. SHEWFELT. Immediately following the strike, there were four, sir. And I believe that you have heard from three of those today. There is one other person who was in the branch at the time.

Now with respect to what each person did, and again this is going back a long time. I have searched my memory to try to discover exactly, if I could recall exactly the kind of guidance that I gave to them. Each of these people were a full performance labor relations specialist at the time. And it is entirely conceivable to me that I asked them to review the files for sufficiency for us to submit to the MSPB at the time when those would be required to be submitted if a person filed an appeal.

I do not remember specifics on what I might have said to them. We wanted to be sure that we had the appropriate documents, the letter that proposed the person's removal, and the decision letter, and the supporting evidence, the person's appointment affidavit, and the various other documents that were included in the files.

Mr. **Oberstar**. My question was the procedure that each one followed, and you amplified that by trying to recall for us what you particularly directed those specialists to do.

But the procedure was for them to review the proposed letter of removal, the decision letter, and the supporting evidence which would include the watch schedule, the time and attendance record, and the sign-in log; correct?

Mr. **Shewfelt**. Yes, sir. And whatever other documents there might be. In various locations, there might be other documents, pictures of people who were holding picket signs, whatever happened to be contained in the file that was relevant.

Mr. **Oberstar**. You were looking for accuracy of records and completeness of records on controllers proposed for termination?

Mr. **Shewfelt**. Yes, sir.

Mr. **Oberstar**. In connection with completeness, where there was a question about a controller, a question, and I will refer to cases, not specific names, but class cases, a controller who was listed for annual leave for the period of say August 1 through August 8th, and that controller received a letter of proposed termination, and the file comes into the labor relations specialist who looks at that record, what is it that would have at that time decided in the labor relations specialist's mind whether the file was accurate and complete?

Mr. **Shewfelt**. Well, completeness would have to do with whether the proposal notice and decision letter were contained in the file, and there was a copy of the attendance record contained in the file, and possibly a sign-in log if that were contained. And correctness, if the date that the person was charged with going on strike coincided with the documents that were contained in the file. And if there was an issue of annual leave, whether there was a copy of a leave request that the person may have made, some note from a supervisor that he had cancelled the leave, or a note conversely that I was unable to contact so and so but I expected them to come in anyhow.

Mr. **Oberstar**. A specific point I guess in each of these cases is whether there was, one of the points that you referred to just a moment ago, whether there was notification by a supervisor to the controller that annual leave had been cancelled.

And if such documentation was missing, then what would the labor relations specialist do?

Mr. **Shewfelt**. Well, I cannot think of a specific incident.

Mr. **Oberstar**. Typically, what would he do?

Mr. **Shewfelt**. What I would have done if I was the labor relations specialist is that I would have called up the facility to ask the manager or the person who made the decision, did this person have annual leave and was it cancelled, and do you have some knowledge about this. If there is not a document, did you personally do it, and are you familiar with that.

Mr. **Oberstar**. And then supporting evidence on that point would be sent in from the facility; is that right?

Mr. **Shewfelt**. Well, possibly, if there was.

Mr. **Oberstar**. Would a phone conversation be sufficient in some cases?

Mr. Shewfelt. Are you asking me the phone call from the supervisor to the employee?

Mr. Oberstar. If, for example, Ms. DuBois had called one of the facility officers and said, we have a question about Controller X, and we do not find in the file verification that he or she was in fact personally notified that annual leave was cancelled, and the facility manager or officer said, oh, yes, we made this call or we contacted the controller's spouse and we made it very clear that the leave was cancelled, or we contacted the controller personally; would the specialist have asked for verification in writing, a memo, substantiating, or would it be sufficient on the basis of that statement for the specialist to enter into the file the notification that this telephone conversation had taken place?

Mr. Shewfelt. I do not know what the individual specialist did in those cases. To me, the significant matter would be whether or not in fact the leave had been cancelled. And if it had, whether there was a particular document in the file that showed that, or whether the supervisor or the manager would be expected to testify about that in the hearing, I guess would be sufficient from my view.

Mr. Oberstar. All right. In those cases where there was a question about cancellation of annual leave and the labor relations specialist had the file there and some additional documentation was needed to substantiate the termination of annual leave, what would the labor relations specialist do with that file, hold it on the desk, put it in a special holding place?

Mr. Shewfelt. I do not think that there was a specific procedure. I think that each one may have handled them differently, and I do not recall.

Mr. Oberstar. While waiting for additional documentation, each one would just hold on to it, they would not send it to higher authority or to the next point along the line, they would not send an incomplete file along, would they?

Mr. Shewfelt. Well, I cannot be certain that that did not happen either.

Mr. Oberstar. Now we have received testimony from previous witnesses that of the four major centers, Indianapolis, Minneapolis, Cleveland and Chicago, that Chicago's files were the ones that were the most questionable and created a number of problems.

Do you recall that as well?

Mr. Shewfelt. Well, I think that the mere fact of the committee's deliberations are evidence of that, and it strikes me that that is the case. But there certainly were problems with other facilities. Not all of the facilities were prepared to deal with the enormity of the problem that confronted them.

Mr. Oberstar. The cause of that or the purpose of it is not the point of our inquiry.

Mr. Shewfelt. Yes, sir.

Mr. Oberstar. Just merely the question of verifying that this center, the Chicago Center, had the largest number of discrepancies and problems, and caused labor relations specialists the greatest amount of concern. They have all testified to that.

Mr. Shewfelt. I would not disagree with that, sir.

Mr. **Oberstar**. We understand that the Chicago Center sent up to the Region at some as yet disputed time, but nonetheless at a time in the October period, a second set of controller records.

Are you familiar with that second shipment of controller records for the Chicago Center?

Mr. **Shewfelt**. No, sir, I am not. I did hear Mr. Yokley mention that he recalls that, but I do not.

Mr. **Oberstar**. When did Mr. Yokley discuss that with you?

Mr. **Shewfelt**. Just after he finished his testimony.

Mr. **Oberstar**. What did he say about that?

Mr. **Shewfelt**. He said that as he spoke to you in response to your questions that his mind was refreshed and that he recalled that there was a second shipment of documents.

Mr. **Oberstar**. Counsel, were either of you present at that discussion?

Mr. **Kupietz**. No.

Mr. **Randall**. I do not think I was.

Mr. **Shewfelt**. But, sir, I do not have any specific recollection of that.

Mr. **Oberstar**. Would that not have come to your attention as the overall director of these operations?

Mr. **Shewfelt**. I wish that it had, but I do not believe that it did. I do not remember it if it did.

Mr. **Oberstar**. It is a pretty substantial shipment, fourteen boxes of documents.

Mr. **Shewfelt**. I remember the questions about that from the previous hearing, sir. You are right, that sounds like a substantial number. Although we had thousands of files in our office at the time. And although fourteen today sounds like something that somebody could not possibly miss, at the time our office was filled with files. I do not specifically remember those files.

Mr. **Oberstar**. That is correct, and I understand. We have certainly become aware that there were thousands of files. One of the previous witnesses suggested somewhere in the range of 2700 controllers were under consideration for termination in the Great Lakes Region. So they represented several thousands of documents. But this shipment was different, because this was a complete replacement for records already sent from the Chicago Center, and would not have gone unnoticed.

And given the fact that there was a shipment and it has been verified now by our committee inquiry and by previous testimony, is this a decision that the Chicago Center would have undertaken on its own?

Mr. **Shewfelt**. I do not remember. In the previous hearing in March, you showed me a list or a record of a meeting that was supposed to have occurred in December. And again, I have searched my memory, and I have reviewed the testimony, and I have looked at the transcript. And I have tried as best as I can to remember that meeting. I have no reason to deny that it occurred, but I do not remember that meeting. And neither do I remember whether anybody, me or anybody else, would have asked them or directed them to submit a second set of documents.

Mr. **Oberstar**. Let me be a little more specific. Mr. Miller has already testified that he indeed had a second set of documents prepared, but that he did not make that decision to do it, that it came from somewhere else. But he cannot recall who was that someone else or where that someplace else is where that decision originated.

Mr. **Shewfelt**. And I can understand the concern on your part, but I do not remember that either. If I did it, it would not seem to be an impossible thing that I did it.

Mr. **Oberstar**. Did you have telephone conversations either one on one with Mr. Miller or with another group in a telecon, a telephone conference, with Mr. Miller in the course of this period of time from August through November?

Mr. **Shewfelt**. To the best of my recollection, I participated in telecons with large groups of the facilities, maybe all of the facilities, but large groups of the facilities. I do not ever remember specifically talking to Mr. Miller during that period of time about their cases or about anything else. I do not remember a one on one telephone call with him or with that facility. That is not to say that it did not happen, but I just do not remember, sir.

Mr. **Oberstar**. If you were not aware of a second shipment of documents from the Chicago Center, who would have been aware of it in the Regional Office?

Mr. **Shewfelt**. Well, apparently, Mr. Yokley was, from what he said to me.

Mr. **Oberstar**. Only Mr. Yokley?

Mr. **Shewfelt**. Well, you see, I do not have knowledge of those, so I do not know if anybody—personal knowledge of those. If others who worked in my office were aware of those, too, I am not aware of that.

Mr. **Oberstar**. Just out of curiosity, did you review files yourself?

Mr. **Shewfelt**. I do not believe that I reviewed files at that time. Subsequent to the time that the files were sent to the MSPB and when cases were being prepared for trial, and cases where there was a question of whether we could prove the case, I did review files along with the regional counsel and the air traffic division manager. And I do not remember precisely the number, forty sticks in my head. We decided to settle those cases and bring that individual back to work.

I do not believe that at the time that the specialists in my office were reviewing the cases for sufficiency that I did, at least in any significant number. It is certainly possible that I picked up a file, looked at it, and put it back down again. But I do not remember stacks of them on my desk.

Mr. **Oberstar**. You did not do any quality assurance with your labor relations specialist looking to see how they were going about processing these files and whether they were doing them right or not?

Mr. **Shewfelt**. Not that I remember, sir.

Mr. **Oberstar**. You just had complete confidence in them to do their job. It was a big job, I understand, it was a rushed time.

Mr. **Shewfelt**. Well, I had a great deal of confidence in them; yes, sir.

Mr. **Oberstar**. I will withhold further questions at this time. The gentleman from Pennsylvania.

Mr. **Clinger**. Thank you, Mr. Chairman.

Mr. Shewfelt, I think that we can all appreciate the tremendous pressure that you and the office and everybody involved with this were under, and we have heard testimony in essence that there was something in the neighborhood of 2500 or 2700 files that were reviewed by your office. And clearly, there were a lot of files floating around there, and probably a lot of boxes of files as well.

It seems to me that the one difference that we are dealing with here is that there were shipped over, in about a ten-day period, fourteen boxes which were total replacements. In other words, they were not new files, but they were replacements for files that had been previously shipped. And we have had some testimony that says that at some point all of the original Chicago Center files were put aside into a holding room, not just a few that looked as though they were problems with them, but the whole Center's production was put aside in a holding room.

Then as these replacements came in, somebody replaced the original file with the second file, and they they shipped it on to MSPB. It just seems incredible to me that you were not aware of this fact, that one entire Center's files were being held up waiting for replacements.

Mr. SHEWFELT. I can see that, sir, but I do not remember that.

Mr. CLINGER. Right. We are talking about some issues or some of the documents that are at issue were the time and attendance reports, the sign-in logs, and the work schedules, which made up Tab 5 in each of the controller's adverse action files. And in October, in your response in October to some Freedom of Information Act requests by controllers for copies of material relied upon to support the removal actions, you did not at that time when you responded to those requests include the Tab 5 contents for any of the many cases which came out of the Chicago Center.

And I guess the question is, given the fact that those were the basic documents relied upon for the removal actions, why were they not included in the response to the requests by the controllers or their attorneys for the information?

Mr. SHEWFELT. I do remember Freedom of Information requests coming in. It seems to me that we got them not only from the Chicago Center but generally from the Union as a tactic, from my perspective it was a tactic to essentially harass us in putting us through an extra work load for production of copies of files that they would otherwise obtain.

Mr. CLINGER. Is it your position that they would have had that information prior to?

Mr. SHEWFELT. Either that they would have had it prior to, or at least the opportunity to review it, and subsequent to upon filing an appeal they would have expected it. And I might point out as an aside that prior to the strike, the standard practice of the MSPB was for us to produce one file copy of our adverse action file with the associated documents. And we would send that to the MSPB, and then they would serve the parties involved.

And shortly after the strike, they changed the ground rules on us and demanded that the agency not only copy but serve the parties involved. And so we got caught up in a confusion of our procedure. We were all of a sudden expected to do something altogether different than we had done in cases where we were only dealing with one case at a time.

But in the case of the Freedom of Information Act requests, I do not remember any specifics about that. I do remember that we had one individual in my office who was a personnel specialist who I asked. He was not directly under my control, but he was assigned to work and to deal with Freedom of Information Act requests.

And our normal procedure in our region is our Management System Division is the program office for Freedom of Information Act requests. And in conjunction with that office and with regional counsel, we would have made some judgment on particular requests and produced the documents or denied them in accordance with the provisions of the law.

Mr. CLINGER. Well, the fact is that you did respond to them. The only thing that you did not do is include the specific information that was relied upon for the removal. And I think that you can appreciate why it would seem, or that the suspicion would be raised in our minds, that because of the timing of this, the request being made on October 23rd which is the very time when the Chicago Center was revising, altering, and amending those very documents, that they did not exist at that time.

Mr. SHEWFELT. I can understand your question and your concern about that. It may be that that was the same procedure that we followed in all of the Freedom of Information Act requests. I guess that there might be some record of that somewhere, I do not know.

Mr. CLINGER. Thank you, Mr. Chairman.

Mr. OBERSTAR. The gentleman from Georgia.

Mr. ROWLAND of Georgia. Thank you, Mr. Chairman.

Six years ago is a long time, and I know that you have trouble recalling some of the things, and I would have trouble recalling some of them, too. But I want to ask you something about procedures. You are the head of labor relations at the regional office, the Great Lakes Regional Office.

Mr. SHEWFELT. Yes, sir.

Mr. ROWLAND of Georgia. Mr. Yokley testified that during a telephone conversation I believe that he was advised that there would be a second shipment of records, and it was his belief that is was Mr. Miller who told him that that was going to take place. And I believe you said that you were not made aware of that. It seems to me that that is an awfully big event to take place. Mr. Yokley said that he thought that it was because there were so many inaccuracies in the records that they had received, and that they had been calling back so many times that it was just his opinion that a decision was made that we will just stop this procedure where we are now and send all of these records up.

Does it not seem to you that if such a decision was made that certainly the person who heads up the labor relations division would be notified about that?

Mr. SHEWFELT. Well, again, I have to say that I wish that I had been. Or if I was, I wish that I could recall it now.

Mr. ROWLAND of Georgia. Well, certainly, you could recall that, if that had taken place.

Mr. SHEWFELT. Well, sir, as you said, it was six years ago, and it was very hectic.

Mr. **Rowland** of Georgia. In fact, on something of that magnitude, do you not think that there would have been a directive sent, that there would have been written information provided about that, on something of that significance?

Mr. **Shewfelt**. Well, I think in our normal course of business apart from the strike situation, I think that exactly that would have happened. I would not have been in the position as a staff person in the regional office to give that kind of direction to a facility manager. I could ask for it. And if he objected to it, in a major work load if he objected to it, I could not order him to do it. And I would have to go through channels to get his superior to order him to do it, and maybe the superior would agree with me and maybe he would not..

Mr. **Rowland** of Georgia. Well, you would not have even known about it based on what you said. But as a matter or procedure, it seems to me that the individual who was in charge of the Chicago Center who made that decision would certainly have notified you about that, it seems to me.

How do you feel about notifying someone who works under you about it and not letting you know about it?

Mr. **Shewfelt**. I do not follow that question, sir.

Mr. **Rowland** of Georgia. Well, the question is that someone who you supervised was advised of this but you were not advised of it.

How do you feel about that?

Mr. **Shewfelt**. Sitting here today, I wish that I had been advised of that.

Mr. **Rowland** of Georgia. Was there some procedure that was outlined for examining these files? Did the labor relations specialists who worked under you have a procedure that they went by when they received a file that had inaccurate information in it, or did they just do the way that they wanted to?

Mr. **Shewfelt**. Well, I think that would be a fair characterization. That these were experienced specialists who had been dealing with adverse actions for a long period of time, and were expected to be able to independently review a file and made determinations about the sufficiency of the file.

Mr. **Rowland** of Georgia. You do not have a protocol for dealing with that?

Mr. **Shewfelt**. No, sir.

Mr. **Rowland** of Georgia. We have been told by some who testified here today that there were those who specialized in certain areas or in certain centers. And then we have been told by others that that was not the case.

Could you enlighten us as to whether or not there were some of the specialists who had particular centers that they dealt with or was it just general?

Mr. **Shewfelt**. When we met yesterday afternoon, the question arose. And one of the specialists remembered dealing with the Chicago Center and others did not. It would seem likely, it would have been kind of an efficient way to lay it out, that if there were four specialists and four centers, that each one would take one, but I do not remember that.

Mr. ROWLAND of Georgia. We heard testimony here today, there was one who said that he had nothing to do with Chicago, and the other two say that they had to do with everything.

Mr. SHEWFELT. Well, to begin with, the files from each center did not come in at the same time, and there may have been files coming in from terminal facilities at the same time. And I suppose that what happened is that the first in were the first ones that were dealt with, and it did not much matter which facility.

Mr. ROWLAND of Georgia. You do not have any idea of what may have happened to files that were set aside and then were replaced by other more correct files that came from the Chicago Center?

Mr. SHEWFELT. No, sir, I do not. I have no recollection about the second shipment of files. So I do not know what became of them. It is apparent that there was a second shipment based on what you have heard in testimony, but I do not have any recollection of that.

Mr. ROWLAND of Georgia. Ordinarily, what would take place if you had some files like that that I guess you would say were of no further use, would not be used, would not be sent on up to the next rung in the ladder?

Mr. SHEWFELT. It is entirely conceivable that they were just thrown out in the garbage.

Mr. ROWLAND of Georgia. Thank you, Mr. Chairman.

Mr. OBERSTAR. If you were not reviewing files yourself, what was your responsibility, what duties were you carrying out during that period of time?

Mr. SHEWFELT. That is a good question. I have been asking myself that, too, why was I not reviewing the files and looking at these particular points. There were all sorts of logistical questions that I was dealing with. We were receiving the files in, and I was short of help. I had not adequate supplies to prepare the files. And so I was dealing with the other divisions to provide that kind of assistance.

I was supervising the individuals who were involved from the standpoint that we hired some clerical people, so I had to do interviews. And I had to get permission, so I had to meet with my superior to get permission to hire people. And I was not acting as a specialist, but I was acting as a supervisor.

And certainly, as I testified earlier, I did have some telecons where I spoke to air traffic managers around our region or I participated in telecons with personnel from the Washington Headquarters as they passed information out that we in turn passed out to others.

It is incredible the number of meetings that a person can attend. I felt as though that I was participating in meetings all day long every day. And I felt as though I was not being a good supervisor. I felt as though I was being drawn every which way at the same time, and I just reacted as best I could.

Mr. OBERSTAR. Were you also involved in renting copiers to make copies of documents to send on to the MSPB or did someone else handle that?

Mr. SHEWFELT. Well, I am sure that our logistics people actually contacted the vendors and did that sort of thing, but I was involved with them in telling them the kinds of equipment that I needed and its capabilities and so on.

Mr. **Oberstar**. I would like to pursue one matter of clarification to make our record complete. Early on in this process of reviewing controller records, it was anticipated that various facilities would each prepare the five copies of records that the MSPB would require. Later on, a decision was made that the Region would do that.

Do you recall or can you describe for us how that decision came about?

Mr. **Shewfelt**. I believe, for instance, that each Region went their own way on that. And I am aware, for instance, that in the Southern Region not only did they do everything centrally, but they issued the letters, they prepared the letters that proposed a person's removal centrally. I do not remember a specific meeting where a decision like that was made. But it certainly seems to me that it was a balancing of who could do the work the fastest and the best at the least cost.

And it seems to me, as I look back on it now, that we were better prepared. The facilities, especially in the smaller facilities in our region, where there was one manager and no supervisors, and possibly no clerical help, who had to work traffic, and hear oral replies, and write letters, and do all of that, if we could relieve them of some burden, that we ought to.

Mr. **Oberstar**. At some undefinable time in the period following August 3rd, the decision was made, was that by you, to do the copying in a central place and then to rent additional copiers so that all of that copying work could be handled?

Mr. **Shewfelt**. It certainly had to have been after the time that we received the order from the production of documents from the Merit Systems Protection Board. I do not remember exactly when that was, but it was after the decisions were made and the appeals began to pour into that office, they started getting flooded with appeals. And all of a sudden, they decided to change their procedures, and they ordered us to follow these new procedures. And at that point in time, we must have decided, well, either the facility has to do it or we have to do it, and we better do it.

Mr. **Oberstar**. When did you begin to get requests from MSPB for production of records, and when did that change in procedure occur, can you specify for us?

Mr. **Shewfelt**. Maybe I can work backwards a little bit. My recollection is that we sent to the MSPB here in the Chicago Region. And by the way, we were also dealing with four other Regional Offices of MSPB which had somewhat different procedures that they expected us to follow. We dealt with the Philadelphia office of the MSPB for certain cases in Ohio, and we dealt with the St. Louis office for certain cases in Southern Illinois, and we dealt with the Denver Office for cases out in the Dakotas.

But mostly, we dealt with the Chicago Region. As I think back on it now, it seems possible that that was centrally directed by the Headquarters of the MSPB. But in any case, we sent the files to MSPB in Chicago, and I suppose to the other locations in November. I remember feeling relieved at Thanksgiving that that initial work load had been accomplished.

Stepping back from that, I presume that they gave us thirty days to produce those documents. So that would put it in early October, as best as I could place it now.

Mr. **Oberstar**. So then sometime, accepting that explanation, in early October, the message went out to the facilities within the Great Lakes Region not to try to produce five copies of each of these records, but to send them into Chicago, and Chicago would produce the five copies?

Mr. **Shewfelt**. I do not think that it would have happened that way.

Mr. **Oberstar**. How would it have happened?

Mr. **Shewfelt**. Previous to that, we never had had an occasion where we would have produced five. That came as a complete surprise to us when we received that order. So it would not have happened that way at all. We would not have said to the facilities, I do not believe, in August or September that you must produce five copies. Because as I remember it, that was an absolute stunner when we were expected to do that.

Mr. **Oberstar**. Previous testimony that we received stated that facilities originally were to do five copies. But because some of the facilities, as you have already said, smaller ones, did not have personnel, adequate copying machines, and could not handle the work load, and you added another element of the MSPB process, that a decision was made to do all of the copying in Chicago, or in the Great Lakes Regional Office. And those facilities were then notified to just send your files here, and we will send the MSPB the required five copies.

Mr. **Shewfelt**. Well, I may be confused about this. But as I recall, the issue of the five copies came as an absolute surprise and a changed procedure by the MSPB, something entirely different than anything that they had ever done or that we had experienced with them before, and we reacted then. If somebody else remembers otherwise, that does not square with my recollection.

Mr. **Oberstar**. The point that I am trying to get at is how did you notify the facilities to just send the copies into the Great Lakes Office, so you would deal with the MSPB copying requirements?

Mr. **Shewfelt**. What seems likely to me is that we asked them to send their files into us without denominating a particular number.

Mr. **Oberstar**. Okay. One further point that I want to explore, and that is again the decision in the Chicago Center to send the second shipment of documents.

Is that the kind of decision that a fairly intermediate level or lower level official would have made on his own?

Mr. **Shewfelt**. Somebody in my office, as an example?

Mr. **Oberstar**. No, somebody in the Chicago Center.

Mr. **Shewfelt**. Well, that is a large work load, but it is not out of line with the kind of work that was going in the facility at that time.

Mr. **Oberstar**. Well, Mr. Shewfelt, I think that it represents more than work load that we are talking about there. It is not a quantitative decision, although that is significant. The quantitative part was in fact done, so there was not any question of whether they could handle that. The question that I am getting at is the qualitative side. There was something much more important than whether we had the capacity to produce another set of these documents. The question is really the condition that those documents were in, and the decision to resubmit if you will. That is a big decision.

Mr. **Shewfelt**. Well, if you are asking me to speculate whether someone in the war room would have done that on their own or whether the facility would have decided to do that, I guess that I would imagine that the facility manager would have done that, but I do not know.

Mr. **Oberstar**. The question that I am asking goes to the quality of the work product. Somebody at that facility had to known or have it made known to him that the quality of that work product was not acceptable, that they needed to improve it. And instead of handling it on an individual basis, they went back and redid the whole packet, 463 files. We have a list right here with the dates on which the originals were sent, and the dates on which the second set were shipped.

And you as the overall authority in labor relations were not aware, somebody did not notify you, and you did not participate in the decision to have that second set prepared?

Mr. **Shewfelt**. I do not remember participating in that, sir, no.

Mr. **Oberstar**. I just find that astonishing.

Counsel, do you have questions?

Mr. **Imus**. Yes.

Mr. Shewfelt, Mr. Walker testified that he had knowledge that the Chicago records had problems, significant problems. In your statements, I think that you acknowledge that.

Is it fair to say that it was generally common knowledge by those at the regional office that the Chicago Center had inadequate records, or at least knowledge by those in air traffic and labor relations?

Mr. **Shewfelt**. Well, I think that I said that I would not disagree with what the specialists in my office felt. I do not remember talking with others in air traffic at that time. But I guess that it would be fair to say.

Mr. **Imus**. So it seems to me that we have a recognition in the regional office that the Chicago records are in poor shape, and that you basically at that point had two options. One, you could submit to the MSPB inadequate records; or two, you could order the Chicago Center to fix those records.

Mr. **Shewfelt**. I think that there is another option.

Mr. **Imus**. What was that?

Mr. **Shewfelt**. We could ask, as we did in the case of the Minneapolis area, ask the manager to reissue the notices, and to allow additional time to reply, and to start the process over again.

Mr. **Imus**. Judging by the impeccable shape that the records are in at the MSPB, it is clear that the second option with Chicago fixing the records was taken.

Mr. **Shewfelt**. Okay.

Mr. **Imus**. Did you know of that decision to have Chicago fix the records?

Mr. **Shewfelt**. I believe that it is true that throughout our region that the specialists in my office would call and ask that files be supplemented by adding the correct records in. That if there was a wrong one or one was missing, that that would occur. And my recollection is that we did not treat the Chicago Center differently than we treated the other facilities.

Mr. IMUS. However, everybody knew that Chicago had inadequate records though?

Mr. SHEWFELT. It is true that we were dealing with inadequate records there.

Mr. IMUS. So when you certified these records to the MSPB, at the time that you did that in mid-November, did you think that you were certifying the inadequate records that everybody knew about, or did you think that you were certifying records that were being corrected and made consistent?

Mr. SHEWFELT. I believe that what I was certifying was the material that the deciding official in every location relied upon. And if that was inadequate and he made a mistake, that that would come out at the trial.

Mr. IMUS. So at the time that you certified it to the MSPB, you thought that you were certifying the Chicago records that contained inaccuracies with them?

Mr. SHEWFELT. Well, I do not believe that there were problems with every file. I think that the majority of the employees there that were removed were removed correctly, and that there were not any problems with their records. And that if there were others that were not, there were individuals who were restored to duty by the order of the court.

Mr. IMUS. Okay. But I am trying to get what condition you thought those records were in at the time that you certified them to the MSPB?

Mr. SHEWFELT. And I have testified about this previously, that I signed a letter that was used on all of the files that were submitted in our region to all of the regional offices that we dealt with. And I did not have the time to review each and every file, and I did not do that.

Mr. IMUS. But did you know that the Chicago Center records had undergone this review process and had been brought into consistency?

Mr. SHEWFELT. No, sir.

Mr. IMUS. So you thought then when you sent the records to the MSPB that the records were still a problem?

Mr. SHEWFELT. And if they were, they would be tried, and the decision would be that this person should not have been removed. And that they would be restored, he or she would be restored.

Mr. IMUS. So did it surprise you to learn that later, probably at the remand hearing that indeed the records were corrected?

Mr. SHEWFELT. The allegations that have been raised about the massive changes in the records came as a surprise to me; yes, sir.

Mr. IMUS. Did you question people who worked under you whether they knew about it, or have you to this day. Did you ask them why they did not tell you this was going on?

Mr. SHEWFELT. I have not asked that question.

Mr. IMUS. It seems to me that if it came as a surprise to you and particularly because you are the director, I mean you are the one responsible, and all of these allegations came forward, I would think that you would come back and say, "boy, my neck was really on the chopping block, why did you not tell me this was going on?"

Mr. SHEWFELT. These cases were being tried all across our Region, and we lost cases in other facilities where the evidence was insufficient to prove the case. I guess we had more people strike at the Chicago Center and more people who were removed there, and also more people who were restored there. I guess that is a measure that there was more problem with them. But I did not find out that there was this second shipment of records or that there were even the charges of the massive changes in them until long after when the committee began deliberating.

Mr. IMUS. Knowing what you and the subcommittee now know about the process and how the records were altered and changed after the controllers had their oral hearing, would you characterize that as fair to the fired controllers?

Mr. SHEWFELT. The process? I do not think that the process that is provided for by the Civil Service Reform Act that we followed under orders of the Board was designed to deal with the massive problem that there was, and I think that it was inadequate. I really think that the process was inadequate. And as a result, we made mistakes, and other people have made mistakes.

And I think that there should not be—let me change that. If there ever is a strike of government employees again, I hope that we will have learned lessons from that on how to deal with that. But I will not stand here and tell you that I had everything down pat. It is obvious that I did not when we went through here. But I do not believe that there were people who were fired who have not been restored that were not on strike.

Mr. IMUS. Knowing what you do now about the way that the Chicago records were prepared, would you have certified those to the MSPB in the same manner that you did?

Mr. SHEWFELT. I guess that I would do is individually review them now no matter what it took.

Mr. IMUS. How would you tell which ones were correct?

Mr. SHEWFELT. I would go through the case file case by case in the same way that the committee has and the same way that the presiding official of the MSPB did and review each one of those files myself, or alternately I would ask that somebody else certify them, that my superior do that, that I could not.

Mr. IMUS. If you were to find in that review a record that had been changed after the controller's oral hearing which would have been long after he was removed and the deciding offical reviewed that material, would you have certified that to the MSPB?

Mr. SHEWFELT. What I would certify would be that this is the material that the deciding official relied upon. And if that was not the material, then I would not certify it that way.

Mr. IMUS. So in terms of the Chicago records it is fair to say, because I think that we have testimony to indicate that those records went through a number of changes after George Gunter made the decision, it is fair to say that you would not have certified those?

Mr. SHEWFELT. Excuse me, could you repeat that, please?

Mr. IMUS. Knowing that the Chicago records went through a multitude of changes after George Gunter issued the proposed removal letter and the final removal letter, knowing that, is it fair to say that you would not have certified the records?

Mr. SHEWFELT. I would go back to what I said before, that I would review each file myself to be certain that each file was exactly the material that was relied upon, and that is what I would certify.

Mr. IMUS. But unfortunately in this case, no changes were dated. So you could not tell looking at an August 3rd sign-in log if those markings were on that log on August 3rd or if those markings were made on October 3rd.

Mr. SHEWFELT. Well, I certainly would rely upon what the facility manager would send to me as being accurate. That was our normal way of doing business, and I presume that is the way that they do business today. The facility manager is the person who made the decision and is responsible for that decision.

Mr. OBERSTAR. Thank you, counsel. Mr. Goebel.

Mr. GOEBEL. Mr. Shewfelt, it is clear that you obviously could not rely upon what was sent to you from the facility manager as being accurate.

And in fact, you testified before this subcommittee in March that your concern in undergoing the review of the files at the Regional Office was to ensure that they were accurate, is that not correct?

Mr. SHEWFELT. Well, accurate and complete, and that there were not the wrong papers in the wrong files. We were looking at it for various purposes.

Mr. GOEBEL. And that would be as standard sort of procedure that you would expect your labor relations specialist and others who would review those files before forwarding them on to the Merit Systems Protection Board to conduct?

Mr. SHEWFELT. Yes, sir.

Mr. GOEBEL. Okay. I want to review for a brief period of time and without prolonging it unnecessarily again the subject of who may have ordered or suggested that this Chicago Center review and a resubmittal of the case files take place. I think that it is clear from the subcommittee's records that one person who did not do so was Robert Miller. He was steadfastly denied undertaking that sort of effort at his own initiative. In fact, the record would clearly indicate that he had very little if any incentive to do so.

Second, you have indicated that, if I recall your testimony earlier correctly, it was not within your power to order a center director to entirely review and resubmit case files of that sort, is that correct?

Mr. SHEWFELT. Those traffic managers do not work for me. I just assist them.

Mr. GOEBEL. I guess that we are down to the point where we need your help in identifying those who may have been in a position to order that sort of a review to take place.

Would the region air traffic division manager have that authority?

Mr. SHEWFELT. I think clearly that he would have that authority.

Mr. GOEBEL. Would the regional counsel have that authority?

Mr. SHEWFELT. I do not believe so, not in the organization of the F.A.A.

Mr. GOEBEL. Would the region manager have that authority?

Mr. SHEWFELT. The regional director?

Mr. **Goebel**. The regional director.

Mr. **Shewfelt**. I believe he would have that authority.

Mr. **Goebel**. Would Washington people from the Administrator on down have that authority?

Mr. **Shewfelt**. Yes, sir.

Mr. **Goebel**. Is it likely that the regional air traffic manager would order that sort of a review without consultation with the very people whose responsibility it was to review those records, mainly the labor relations branch and/or perhaps the regional counsel's office?

Mr. **Shewfelt**. Is it likely that—if you would repeat that.

Mr. **Goebel**. Is it likely that the head of the region's air traffic division would have ordered that sort of a comprehensive review and resubmittal of those records without the benefit of consultation with the people who were responsible for reviewing those records originally for their accuracy, that being the labor relations branch, and those who were responsible for reviewing the records as to probable legal sufficiency, the regional counsel's office?

Mr. **Shewfelt**. I do not believe that is likely, sir.

Mr. **Goebel**. Okay. On October 23, 1981, the FAA requested an extension of time from October 30th to November 30th in which to furnish the case files to the Merit Systems Protection Board.

Do you know why that request was made?

Mr. **Shewfelt**. I believe that it was just the logistics of accomplishing the copying of the files in my office, that we needed additional time, that we just could not do the work as quickly as had been ordered.

Mr. **Goebel**. Whose idea was it to request that extension of time, and do you recall who made the request?

Mr. **Shewfelt**. No, I do not recall who made the request. I am certain that I would have been involved in the decision.

Mr. **Goebel**. Counsel, is a copy of that request still available from somewhere, either in the regional archives or otherwise that might be made available to the subcommittee?

Mr. **Kupietz**. Mr. Goebel, we will certainly check. It is quite possible and I would assume that the MSPB has such a copy of a document if it was made in writing. I do not recall seeing it. Honestly, I do not really know where we would check if it is not in the adverse action files. I am not sure where we would look. But we will just double-check to see if there are any documents that would meet that subject.

Mr. **Goebel**. The last area of questioning that I have, and I will not prolong it unnecessarily, is that a lot of the issues that we are involved with here surround the determination as to whether or not the records that we eventually forwarded from the Great Lakes Regional Office to the Merit Systems Protection Board in fact constituted the evidence relied upon in this case by the Chicago Center manager in his decisions to remove those striking controllers.

Do you recall the particular choice of the words "evidence relied upon," how that was decided upon, who may have made that decision?

Mr. **Shewfelt**. It seems to me that that is what is called for in the regulations of the Merit Systems Protection Board.

Mr. GOEBEL. From what the subcommittee had been able to determine, the Merit System Protection Board and the FAA order implementing the Merit Systems Protection Board guidance talk about documents contained in the agency record of the proceedings, and nowhere have we been able to locate anything either emanating from the MSPB or from the department or from the agency that particularly describes the evidence relied upon.

In fact, the MSPB in response to a question from us said, "no we would not use that terminology because until it is absolutely introduced and accepted into evidence, it is not evidence, and we would not ask for it in that form."

Mr. SHEWFELT. Well, it is conceivable I guess that that term was something that had existed and been used under the previous appeal procedure in 1978, I believe it was. The Civil Service Reform Act established the Merit Systems Protection Board. And prior to that, there was an agency entitled Federal Employee Appeals Authority. And it may be something that they had in their rules at the time.

Mr. GOEBEL. Would you agree that if not legally that at least to the layman and perhaps even to the lawyers in the room that the description of documents contained in the agency record of the proceedings may be something entirely different from evidence relied upon?

Mr. SHEWFELT. As a layman, I would see that it could be different, but I am not a lawyer.

Mr. GOEBEL. Would the choice of the words, "documents contained in the agency record of the proceedings," make it a far easier job for the agency, and for you in particular, and for Mr. Gunter, and for Mr. Miller to defend the entire process as we now clearly recognize it has unfolded—that the documents that were eventually forwarded on to the Merit Systems Protection Board were not, in fact, in all cases or in most cases those that were in existence at the time of the removal actions, but were in fact evidence later prepared to more accurately reflect actual conditions as they existed at the time of the removals?

Mr. SHEWFELT. Well, again, speaking as a layman, it seems that that may be true. But I do think that would have to be tested obviously in litigation, and I am not an expert in that. What you say seems conceivable to me at least.

Mr. GOEBEL. No further questions, Mr. Chairman.

Mr. OBERSTAR. Mr. Clinger.

Mr. CLINGER. No questions, Mr. Chairman.

Mr. OBERSTAR. Mr. Rowland.

Mr. ROWLAND of Georgia. No questions.

Mr. SHEWFELT. Excuse me, sir.

Mr. OBERSTAR. Yes.

Mr. SHEWFELT. Counsel is referring me to a copy of a proposal notice that was issued on August 8th at the Chicago Center. And the language that we have been talking about, the material relied upon to support this proposed action, is avaialble for your review. It is contained in that letter. And as I recall, the exact language that we were to use in the proposal notices was given to us by Headquarters. So it is conceivable that that is the basis of what we had in that.

Mr. **Goebel**. So it may have come from FAA Headquarters?

Mr. **Shewfelt**. Conceivably.

Mr. **Goebel**. Even though the letter that we are specifically referring to is that in which you certified the record up to the MSPB, and not necessarily that which was in the removal letter?

Mr. **Shewfelt**. But the same phrase is used, material relied upon.

Mr. **Oberstar**. Mr. Shewfelt, I guess that in our lives that all of us can think of some actions that we would like to take back. You said at the outset that, "I wish now that I had known about that," that meaning the second shipment of documents. I guess that you would like to know how that decision came about from your testimony.

Frankly, I find it astonishing that a decision of such magnitude was made without you, the person responsible in the region for such actions, knowing that it had been taken, being informed of it, and even being a part of that decision.

I can imagine Mr. Miller in the war room at the Chicago Center having spent weeks and weeks going over this record, having faced the water hoses, as he has described to us, from the fire department, the constant jibes of controllers on the picket line as he walked through, having spent long hours reviewing records in this war room that used to be the PATCO office.

I can imagine the bitterness and the ugly tone of the feelings incurred throughout that period of time. I can imagine that when he got to the point where all of this record review was completed that he would have heaved a sign of relief and said, you know, we are glad to have this behind us.

I find it astonishing that he would have undertaken on his own a second processing of these records. And in fact, he says that he did not make the decision to do it. That it sort of materialized out of the bureaucratic morass out there. I find that astonishing.

It is one of the greatest abdications of acceptance of responsibility that I have seen in my years of dealing with executive branch actions. You in fact are asking the subcommittee by your testimony to believe that a major decision of this kind was taken and that nobody was responsible for it, that it just was done. That stretches your credibility, but I accept your word.

Mr. **Shewfelt**. Mr. Chairman——

Mr. **Oberstar**. I hope that you, throughout this process, have learned something, and that your agency has learned something. And you know, as you said, that Civil Service procedures were inadequate to handle this particular kind of case. And I do not think that any procedure anticipated a massive job action of this kind.

On the other hand, there are some very basic concepts in our system of jurisprudence which carry over into our administrative review process. And that is the integrity of the individual, the right of an individual to be innocent until proven guilty.

It seems to me that there were some decisions made about these cases that left hanging that basic presumption in our system. And in that process, the point that sticks out in my mind is the changing of records after the oral reply hearing. And this series of 463 controller records, virtually all of those that were contested, were changed, nearly 90 percent of them at any rate, were changed after the oral reply hearing. Some changed, some amended, some adjusted, use whatever words you folks actually choose to use, was done after that point.

And that ought to have raised with you and others in your department serious questions about the process being followed. I hope that therein is a lesson for the future. We are just trying to piece together the past. We cannot do that without your participation and that of others in this process, but I think that we have been able to piece it together pretty well. We will have a report that will present our findings.

But I have to share that with you, because I think that you are, at least your testimony today shows you to be a person of some sensitivity to the problem here and what has occurred, and I hope a willingness that something of this massive nature never happens again. You may have a response if you wish. You wanted to say something earlier.

Mr. SHEWFELT. I do understand the concern that the committee has for the rights of the individuals. And I have thought about those questions many times since 1981. And speaking as a private citizen and not as a bureaucrat, I have had second thoughts about the prohibition against strikes by government employees, and the procedures that we follow in the area of labor-managment relations with federal employees. I do not have answers, but I know that I feel differently today about the public policy questions that I did in 1981.

Mr. OBERSTAR. You will accomplish a great deal if you and others are able to search within themselves to rethink old viewpoints. Thank you for your testimony.

Mr. SHEWFELT. Thank you.

[Witness excused.]

Mr. OBERSTAR. Now we will have a final presentation from Mr. Miller.

[Recess.]

FURTHER TESTIMONY OF ROBERT L. MILLER, FEDERAL AVIATION ADMINISTRATION

Mr. OBERSTAR. Mr. Miller, we would like to review further the matter of the signature stamp just to clarify our records, and resolve some questions outstanding.

When the matter of affixing your signature stamp on sign-in logs was originally brought up in testimony before the Merit Systems Protection Board, you told the MSPB that you remembered directing other personnel in the war room to use the stamp, is that correct?

Mr. MILLER. Yes, sir.

Mr. OBERSTAR. In testimony before the commttee earlier this year in March, you said that you did not recall the stamp. and you did not recall telling anyone, and you corrected that statement in your opening remarks today.

Do you have an extra copy of your prepared remarks that you could leave with the committee?

Mr. MILLER. Yes, sir.

Mr. OBERSTAR. Thank you.

You have thought this through, and why did you make the statement that you did in March about the signature stamp, the statement that had no basis in fact?

Mr. MILLER. Which specific one are you speaking about, Mr. Chairman?

Mr. OBERSTAR. The statement that you did not have a stamp and you did not tell anyone to use it, and that you only discovered it later on. You went to some length to correct in your opening remarks, your opening remarks today, the statement about the signature stamp which you made in March. Why did you make the statements in March that you did at that time?

I asked you, referring to your secretary, "You did not give your secretary the authority to use the stamp. She did not have the authority to use the stamp. Who did have the authority, you? Obviously, it is your stamp. Why would you have used the stamp instead of a signature?"

And you said, "I had no reason to. I did not know that the stamp existed until we were cleaning the desk out of the war room."

I said, "You did not know of the existence of the stamp?" You said, "That is correct."

You have changed that statement today, you asked if we would give you the opportunity to do that.

I just want to know why was it that you could not recall back in March the actual circumstances?

Mr. MILLER. I did not think that I had asked that we did not use it. I was upset when I did locate it. Are you referring to page 190?

Mr. OBERSTAR. Page 192.

Mr. MILLER. Oh, okay. On 190, I did say that I believe that it was used and placed on the documents, yes.

Mr. OBERSTAR. Page 192, line 4738.

Mr. RANDALL. Mr. Chairman, I think that what is confusing in the testimony in March is the time sequence, which I think Mr. Miller has tried to sort out a little bit today. In his testimony in March on page 190, he references the fact that he had asked others to use the stamp to signify the completion of the review of documents on 190 and 191. And then subsequently, he indicated that he had found the stamp in a desk in the war room about the time that it had been disbanding. He does not use the term "surprise", but that is the import that is conveyed there.

And I think that in his testmony today earlier, which you will note, is that he is correcting his impression that it had been when the war room was disbanding that he had found the stamp in the war room. And that it was more contemporaneous with the time that George Gunter had completed his review of the documents, and they were rearranging the war room.

At that time, moving some desks out of there, he located the stamp, and went to this secretary and found that she had a stamp and took it from her. And it was subsequent to that time in his recollection at this point that he provided the stamp to people in the war room to us. So I think that it was a timing sequence.

Mr. IMUS. Excuse me, Mr. Randall.

Is he saying that the first time that he knew that he had a stamp was when he found it in the war room, is that his testimony?

Mr. Randall. Let me have Mr. Miller address that.

Mr. Miller. Yes, that was basically when I was aware that the stamp was there.

Mr. Imus. According to Marge Elliott, she said that you had a stamp long before she worked for you, and that everybody knew that you had a stamp.

So all of this time, the stamp in front of you is dated May of 1979, you never knew you had it, is that your testimony?

Mr. Miller. I was not aware of it, or I did not recall that we had the stamp. I had not told her to go ahead and use it, that is correct.

Mr. Oberstar. We just want to get this clear and make sure that you have had every opportunity to make it very clear on the record the existence of the stamp, who knew about it, how it was used, why it was used, and why you could not be precise about it at the earlier testimony.

Do you recall now, you have had time to think this through now, telling war room personnel to use the stamp and under what circumstances?

Mr. Miller. From reviewing previous; yes, sir, I still believe that I had instructed them when the document review was complete to use the stamp.

Mr. Oberstar. To use the stamp, as you said, to show completion of the review of the files?

Mr. Miller. Yes, sir.

Mr. Oberstar. Did the stamp also signify that the records themselves were complete and accurate?

Mr. Miller. That we had reviewed them to the best of our ability at the time; yes, sir.

Mr. Oberstar. Well, reviewed them, but did affixing the stamp certify that this record is complete and that it is accurate?

Mr. Miller. No. It was more just an administrative review had been completed by the personnel there.

Mr. Oberstar. But it had nothing to due with the accuracy, just that the review was completed?

Mr. Miller. Yes, sir.

Mr. Oberstar. How would the accuracy of the record be verified?

Mr. Miller. As we were researching them and by comparison to the provided watch schedule.

Mr. Oberstar. Well, I have a question here having reviewed all of these documents.

If the signature stamp was put on the sign-in logs to show, as you have said, that war room review was completed, and if every log was reviewed, then why does the stamp appear on less than thirty percent of the sign-in logs submitted in evidence to the MSPB, why was not the stamp affixed uniformly throughout?

Mr. Miller. I believe that I had mentioned in previous testimony that if there was a signature stamp that there was no need to put one on. It was in depositions, yes. And the fact that we did not start using the stamp until very late in the review process.

Mr. Oberstar. Counsel.

Mr. Imus. The signatures of supervisors who appear on logs that do not have your signature stamp, when was that signature put on by those supervisors? Let's talk about an August 5th log.

Mr. MILLER. It could have been put on August 5th from the area. It may have been put on August 6th when the supervisor in charge or the area manager reviewed the documents to send them down.

Mr. IMUS. Would that signature by that supervisor have been put on at the end of October or the first part of November?

Mr. MILLER. I do not believe so; no, not normally.

Mr. IMUS. So that signature then does not signify that the review had been complete?

Mr. MILLER. No.

Mr. IMUS. So on those logs, seventy percent of the logs, you cannot tell if that review had been complete or not, is that correct?

Mr. MILLER. Yes, that is correct.

Mr. IMUS. Yet you said that you stamped some logs to show that the review was complete.

Mr. MILLER. Yes, that is true.

Mr. OBERSTAR. Were those principally logs that were reviewed following the oral reply hearing?

Mr. MILLER. It could have been during, also, I believe, but more than likely after. I am not sure of the exact time sequencing. My supposition is that it was probably after the oral reply hearings.

Mr. OBERSTAR. And that raises a question of whether there was not an additional pressure there to clean up those records?

Mr. MILLER. To make them accurate, yes, that we were attempting to do.

Mr. OBERSTAR. The ones after the oral reply hearing, do you not find a problem with that?

Mr. MILLER. No, sir.

Mr. OBERSTAR. After a controller has given his side of the case, you come back and you change the record?

Mr. MILLER. I believe that a great majority of these were not provided to the controller as documentation of their initial AWOL. The only record it was showing was the first couple of days of their AWOL from their charge date to their initial AWOL date, I believe. And many of these were after that. We were correcting the logs that administratively we had not caught up on prior to that.

Mr. OBERSTAR. But the logs that show the signature stamp are logs that were created in the war room operations?

Mr. MILLER. I believe that some of them were; yes, sir.

Mr. OBERSTAR. Well, we think that most of them were, because they do not have the signature or the initials of a working controller.

Mr. MILLER. Yes. Some of the very first few days until we had establishd the practice of not filling out the persons that were not attending. Then after that, I believe that we had originated the logs, yes.

Mr. OBERSTAR. So the point that I made earlier, to come back to it then, is that the signature stamp was used at a certain point in this process to give manufactured logs more plausibility and credibility?

Mr. MILLER. I think that it was just to show that the review was what I had administratively intended it for. As it worked out, it did not provide us that capability.

Mr. OBERSTAR. Is it not just entirely possible and more likely probable that under the circumstances under which you were working at the time that you and others in F.A.A. realized that in proceedings before the MSPB that sign-in logs without a signature and without a signature stamp would be lacking in credibility, would have less evidentiary weight than those that would be signed or stamped, and therefore a stamp was needed for those about which there were some questions?

Mr. MILLER. If that is for an opinion that you are asking, sir, no, I do not believe that is a true statement.

Mr. KUPIETZ. Mr. Chairman, if I might add, the reverse side of the sign-in logs, to my knowledge anyway, whenever introduced into any of the hearings, they were not relied upon and they were not submitted or used in support of the removal action. So I do not believe that the agency from a legal position had the opinion that the reverse side had any significance at all.

Mr. IMUS. However, in 1984, you had to produce the reverse side, is that correct, in the remand hearing?

Mr. KUPIETZ. We were ordered to produce both sides, that is correct.

Mr. OBERSTAR. So it did have some significance at a certain point in the process, counsel.

Mr. KUPIETZ. Only in that we were ordered to photocopy them.

Mr. RANDALL. It was during the discovery process, I believe, that we had to supply it, because it has been asked by the other side.

Mr. KUPIETZ. In fact, I specifically stated during one of the many contentious moments during the hearing that the reverse side of the sign-in log was irrelevant, and that we were not relying upon it. I made that point I think clearly in the transcript.

Mr. OBERSTAR. The question is raised about the bleed-through, because the bleed-through is evidence that there were two sets of documents, is that not correct.

Mr. KUPIETZ. I think, as I see it, Mr. Chairman, that the bleed-through does indicate that the documents were stamped sometime after they were copied and sent to the Labor Relations Office.

Mr. OBERSTAR. But there is one set of documents without the stamp and another set with the stamp.

Mr. KUPIETZ. That appears to be the case.

Mr. IMUS. Which could have been stamped in 1984, or 1983 or 1982.

Mr. OBERSTAR. Or it could have been stamped in 1981. We do not know that.

Mr. KUPIETZ. That is correct.

Mr. OBERSTAR. Mr. Clinger.

Mr. CLINGER. Well, just to conclude here. We have asked everybody whom you have identified as someone who had been requested or directed to use the stamp, and they have all denied knowing of its existence or using it.

Can you account for that at all?

Mr. MILLER. No. sir, I cannot. That is still a mystery to me, also.

Mr. CLINGER. And then I guess the other thing is, can you account for the fact that on the logs bearing your signature stamp that there are no signatures of any working controllers? In other words, consistently the ones bearing the stamp do not have signatures of working controllers where those without the stamp do?

Mr. **Miller.** I cannot account for that directly; no, sir. But it implies that it did come from the war room.

Mr. **Clinger.** Right.

Mr. **Miller.** That is the implication; yes, sir.

Mr. **Clinger.** Thank you, Mr. Chairman.

Mr. **Oberstar.** Mr. Rowland.

Mr. **Rowland** of Georgia. No question.

Mr. **Oberstar.** Counsel, do you have questions?

Mr. **Imus.** No.

Mr. **Oberstar.** Mr. Miller, we are trying to understand your position, and your statements, and those of counsel in the circumstance. And I think that you have to appreciate our viewpoint which raises these questions. And that is looking at these documents, as we have over a period of months, and knowing what we know about all that occurred and the wide range of opinions as well as specific factual statements by so many individuals at variance with one another, it raises questions in our minds as to what was really going on, what was the purpose of affixing stamps and changing records after oral replies and attempting to pass them off as contemporaneous records.

That something occurred here that was more than accidental, a series of misadventures, a series of inappropriate bumbling, but perhaps well-intentioned actions. It does stretch one's credibility.

And finally, I think that this whole process that has been followed here has been one that in retrospect, and I think that one fairly could say at that time, should have raised questions about the propriety of dealing with these records in the fashion which they were dealt with, and their impact upon careers of those people whose lives and livelihoods were drastically changed as a result.

If there is a lesson to be learned, then it is that the fundamental principles of American law, and our Constitution, and our government is that we are innocent until proven guilty, that a procedure must be followed, that procedure sometimes determines substance, and that in this case there was a rather overwhelming failure to adhere to fairness, and thoroughness, and accuracy.

The previous witness said that he wished that he could take back some of the actions that were done some years ago. We cannot recreate the past, but we can protect people in the future from mistakes of the past. We will be generous in calling the mistakes, and hope that you, the agency, and all have learned a very important lesson.

This may not be the last time that actions of this kind will have to be reviewed. I hope that we will not have a massive overturning of personnel in the FAA among the controller force. Safety in the airways cannot stand it. The fact that another union has been created and problems continue to surface in the work force suggests that the problems are not behind us in air traffic control. And that as unrest grows, we have to be sensitive to its causes and to dealing with its results.

And we have certainly had a major experience in the 1981 incident, and let us learn from that for the future.

With that, the subcommittee stands adjourned.

[Whereupon, at 6:33 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

EXHIBITS

Geo	Per your request		Totals
E/T	7 T/S	4 controllers	ET 11
E/W	7 T/S	2 controllers	EW 9
E/H	7 T/S	10 controllers	EH 17
W/H	7 T/S	12 controllers	WH 19
W/W	7 T/S	10 controllers	WW 17
W/T	6 T/S	5 controllers	WT 11
N/W	6 T/S	4 controllers	NW 10
A-SIDE	CURRENTLY BEING USED		14

These numbers reflect the personnel on board since the strike began. A breakdown is on the back.

— EXHIBIT 1 —

BREAKDOWN BY AREA

E/T

Cirrino
Lindsey
Knuckelhack
Halle
Plasch
Zeal
Bartels
Lynch
Brown
Pope - EPDS
Ford - 3 Manuals)

E/W

Petrie
Kok
Klein
Burns
Sammons
Kolasek
Clayborn
Dated
Bishop - F/C

E/H

Salinas
Winslow
Fisher
Carter
Brink
Gould
Bronson
Angelone
Kulling
McLaren
F. Boyle - EPDS
Brandt
VanAndel
Rucker - EPDS
Stammer
Fritsch
Panka

W/H

Graf
Thielman
Mingus
Wolf
Gilliam
Gurley
Dean
Lynch - EPDS
Kaysen
Miller
Morrissey
Quinn
Mannion
M. Boyle - EPDS
Riehl
Shanks - EVAL
Byrd
Ross
Bohm

W/T

Hansen
Mitchell
Harper
Ott
Balejarka - EPDS
Nevins - EPDS
Sterud
Riddle
School
Duvernere
Bremmer - EPDS

N/W

Miller
Alomar
Raap
Kowalek
Adair
Mayes - EPDS
Albrecht
Jorgensen
Woolcott

W/W

Bachman
Sanborn
Spinler
Niemeyer
Frazel
Samp
Martinson
Feakins
Magnuson
Debb
Johnson - S/S
Brown
Perrin
Snell - EPDS
Copper
M. Broom
King

A-SIDE

Grissom
Daniels
Pursey
Denise Davis - co-op
Mary Mayes Sec
Fanteck - EPDS
Fitting - DSS
Elliott - DSS
Gordon - DSS
Murray - EPDS
McMahon - DSS
Trude - EPDS
Quattrini - DSS
Chatfield - Pending

Guidelines for ~~Line~~ processing removals

TELEGRAPHIC MESSAGE

NAME OF AGENCY FEDERAL AVIATION ADMINISTRATION OFFICE OF LABOR RELATIONS WASHINGTON, D.C. 20591	PRECEDENCE ACTION: PRIORITY INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☒ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME E. V. CURRAN , ALR-1	PHONE NUMBER 426-3248	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

DATE TIME GROUP

11 AUG 81 1554z

1 GENOT RWA 1/147 SVCB

F ALRGNS 1/10/16/500 CHIEFS OF ALATFO

THIS MESSAGE CONTAINS THE FOLLOWING GUIDANCE ON THE PROCESSING OF REMOVAL ACTIONS INVOLVING STRIKING CONTROLLERS: 1) DESIGNATION OF REPRESENTATIVE TO HEAR ORAL RESPONSE; 2) REACTION TO REQUESTS FOR EXTENSION OF 7-DAY PROPOSED NOTICE; 3) REMINDER TO DECIDING OFFICIALS; AND 4) EXAMPLE LETTER OF DECISION TO REMOVE.

1) DESIGNATION OF REPRESENTATIVE TO HEAR ORAL RESPONSE

UNDER PERTINENT REGULATIONS DECIDING OFFICIALS MAY MAKE A WRITTEN DESIGNATION OF ANOTHER MANAGEMENT REPRESENTATIVE TO HEAR AN ORAL REPLY. AS DESCRIBED IN PARAGRAPH 206b, Order 3770.2B, THE
2 REPRESENTATIVE MUST PREPARE A WRITTEN SUMMARY OF THE ORAL RESPONSE AND RECOMMEND WHAT THE DECISION ON THE PROPOSED ACTION SHOULD BE. FAA OFFICALS DESIGNATED TO HEAR REPLIES MUST HAVE SUFFICIENT JUDGEMENT AND EXPERIENCE TO PERFORM THIS FUNCTION. OFFICIALS NOT EMPLOYED

PAGE NO 1	NO OF PGS. 5	SECURITY CLASSIFICATION

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GSA FPMR (41 CFR) 101-35.306

14-102

★U.S.GPO:1979-0-281-187/4249

EXHIBIT 2

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO:

[illegible]

BY FAA SHOULD NOT BE USED FOR THIS PURPOSE.

2)REACTION TO REQUESTS FOR EXTENSION OF 7-DAY PROPOSED NOTICE

AS THE REMOVALS ARE BEING PROCESSED UNDER THE ACCELERATED PROCEDURES OF THE CRIME PROVISION, ROUTINE REQUESTS FOR EXTENSIONS OF THE 7-DAY NOTICE PERIOD ARE NOT TO BE GRANTED. PROTESTS THAT THE CRIME PROVISION IS NOT APPROPRIATE OR THAT ADDITIONAL MATERIAL IS BEING 3 REQUESTED BY THE EMPLOYEE ARE NOT APPROPRIATE REASONS FOR GRANTING EXTRA TIME. WRITTEN DENIALS OF REQUESTS FOR EXTENTIONS SHOULD BE ISSUED PROMPTLY TO EMPLOYEES. DENIALS SHOULD ACKNOWLEDGE RECEIPT OF THE REQUEST FOR EXTENSION, STATE THAT UNDER THE CIRCUMSTANCES AN EXTENSION IS NOT APPROPRIATE AND RESTATE THE DATE BY WHICH THE ORAL AND/OR WRITTEN RESPONSE MUST BE RECEIVED. THEY SHOULD ALSO ADVISE EMPLOYEE TO IMMEDIATELY CONTACT THE OFFICIAL DESIGNATED TO HEAR THE ORAL REPLY, TO MAKE ARRANGEMENTS TO SCHEDULE THE ORAL REPLY IN THE NOTICE TIME THAT IS REMAINING. IN EXCEPTIONAL CASES, EXTENSIONS TO 4 THE NOTICE PERIOD MAY BE GRANTED IF THE EMPLOYEE CAN DEMONSTRATE THAT HE IS LEGITIMATELY 5 PREVENTED FROM MAKING A RESPONSE. SUCH

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— EXHIBIT 2 (cont.) —

TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO:

EXTENSIONS MUST BE SUPPORTED BY PHYSICAN'S STATEMENTS, HOSPITAL RECORDS, ETC. ANY EXTENSIONS TO BE GRANTED MUST BE COORDINATED WITH THE REGIONAL LR BRANCH.

3) REMINDER TO DECIDING OFFICIALS

DECIDING OFFICIALS ARE REMINDED THAT IT IS APPROPRIATE AND PROPER TO CONSULT WITH REPRESENTATIVES OF LR, GC AND/OR AIR TRAFFIC PRIOR TO RENDERING A DECISION ON A PROPOSED REMOVAL.

4) EXAMPLE LETTER OF DECISION TO REMOVE

DATE:

NAME OF EMPLOYEE:

ADDRESS:

DEAR (NAME):

MY LETTER OF (DATE) INFORMED YOU OF A PROPOSAL TO REMOVE YOU FROM YOUR POSITION OF (TITLE, SERIES, GRADE AND SALARY, FACILITY AND

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3	5	

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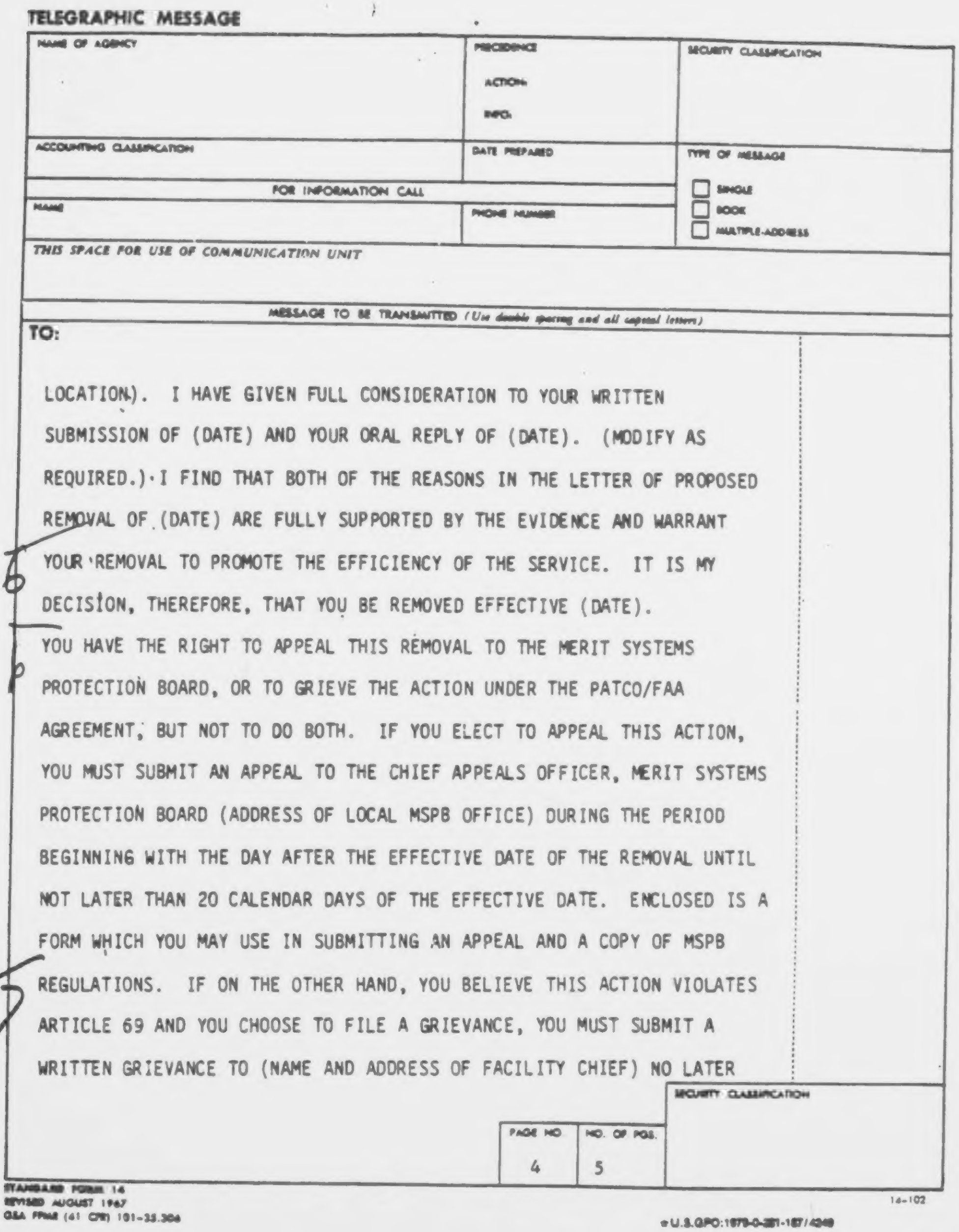
— EXHIBIT 2 (cont.) —



TELEGRAPHIC MESSAGE

NAME OF AGENCY	PRECEDENCE ACTION: INFO:	SECURITY CLASSIFICATION
ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO:

LOCATION). I HAVE GIVEN FULL CONSIDERATION TO YOUR WRITTEN SUBMISSION OF (DATE) AND YOUR ORAL REPLY OF (DATE). (MODIFY AS REQUIRED.) I FIND THAT BOTH OF THE REASONS IN THE LETTER OF PROPOSED REMOVAL OF (DATE) ARE FULLY SUPPORTED BY THE EVIDENCE AND WARRANT YOUR REMOVAL TO PROMOTE THE EFFICIENCY OF THE SERVICE. IT IS MY DECISION, THEREFORE, THAT YOU BE REMOVED EFFECTIVE (DATE).

YOU HAVE THE RIGHT TO APPEAL THIS REMOVAL TO THE MERIT SYSTEMS PROTECTION BOARD, OR TO GRIEVE THE ACTION UNDER THE PATCO/FAA AGREEMENT, BUT NOT TO DO BOTH. IF YOU ELECT TO APPEAL THIS ACTION, YOU MUST SUBMIT AN APPEAL TO THE CHIEF APPEALS OFFICER, MERIT SYSTEMS PROTECTION BOARD (ADDRESS OF LOCAL MSPB OFFICE) DURING THE PERIOD BEGINNING WITH THE DAY AFTER THE EFFECTIVE DATE OF THE REMOVAL UNTIL NOT LATER THAN 20 CALENDAR DAYS OF THE EFFECTIVE DATE. ENCLOSED IS A FORM WHICH YOU MAY USE IN SUBMITTING AN APPEAL AND A COPY OF MSPB REGULATIONS. IF ON THE OTHER HAND, YOU BELIEVE THIS ACTION VIOLATES ARTICLE 69 AND YOU CHOOSE TO FILE A GRIEVANCE, YOU MUST SUBMIT A WRITTEN GRIEVANCE TO (NAME AND ADDRESS OF FACILITY CHIEF) NO LATER

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EXHIBIT 2 (cont.)

TELEGRAPHIC MESSAGE

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ACCOUNTING CLASSIFICATION	DATE PREPARED	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME	PHONE NUMBER	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO:

THAN 15 CALENDAR DAYS AFTER THE EFFECTIVE DATE OF THE REMOVAL.

IN THIS CONNECTION YOU SHOULD KNOW THAT THE FAA HAS FILED AN UNFAIR LABOR PRACTICE (ULP) CHARGE AGAINST PATCO FOR ITS ROLE IN THE STRIKE AND IS SEEKING TO HAVE THE UNION DECERTIFIED. THE CASE IS NOW BEING PROCESSED BY THE AUTHORITY AND A DETERMINATION THAT PATCO COMMITTED A ULP COULD IMPACT ON THE PROCESSING OF GRIEVANCES UNDER THE PATCO/FAA AGREEMENT. IF THE UNION IS DECERTIFIED AND THE AGREEMENT TERMINATED, THIS AVENUE OF APPEAL MAY NOT BE AVAILABLE TO YOU. IF YOU ELECT TO FILE A GRIEVANCE, IT MUST BE FILED IN ACCORDANCE WITH ARTICLE 7, SECTION 8, OF THE AGREEMENT AND SUBMITTED ON FAA FORM 3770.2. THE GRIEVANCE WILL BE PROCESSED BEGINNING WITH STEP 2 OF THE GRIEVANCE PROCEDURE IN THE AGREEMENT.

UPON YOUR REQUEST, (NAME, TITLE, LOCATION) WILL GIVE YOU FURTHER INFORMATION ON APPEALS PROCEDURES TO THE MERIT SYSTEMS PROTECTION BOARD.

(SIGNED)____________________
AUTHORIZED DECIDING OFFICIAL
TITLE
ORGANIZATION

Curran
CURRAN, AIR-1

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— EXHIBIT 2 (cont.) —

e procedures provided in 5 U.S.C.
13(b).
b) *Notice of proposed action.* (1)
ie notice of proposal shall inform
e employee of his or her right to
view the material which is relied on
support the reasons for action given
the notice. The agency may not use
aterial which cannot be disclosed to
e employee or his or her representa-
ve or designated physician under
297.108(c)(1) of Part 297 of this title
support the reasons in the notice.
(2) When some but not all employees
a given competitive level are being
irloughed, the notice of proposal
iall state the basis for selecting a
articular employee for furlough, as
ell as the reasons for the furlough.
(3) Under ordinary circumstances,
n employee whose removal has been
roposed shall remain in a duty status
i his regular position during the ad-
ance notice period. In those rare cir-
umstances where the agency deter-
iines that the employee's continued
resence in the work place during the
otice period may pose a threat to the
mployee or others, result in loss of or
amage to Government property, or
therwise jeopardize legitimate Gov-
rnment interests, the agency shall
onsider whether any of the following
lternatives is feasible:
(i) Assigning the employee to duties
where he or she is no longer a threat
o safety, the agency mission, or to
Government property;
(ii) Placing the employee on leave
with his or her consent;
(iii) Placing the employee on invol-
untary sick or other leave when the
agency has medical documentation
lemonstrating physical or mental in-
apacitation;
(iv) Carrying the employee on appro-
priate leave (annual, sick, leave with-
out pay, or absence without leave) if
ie or she is absent for reasons not
originating with the agency; or
(v) Curtailing the notice period
when the agency can invoke the provi-
sions of § 752.404(d)(1) (the "crime
provision"). This provision may be in-
voked even in the absence of judicial
action if the agency has reasonable
cause to believe that the employee has
committed a crime for which a sen-
tence of imprisonment may be imposed. If none of these alternatives is available, the agency may place the employee in a paid, nonduty status during all or part of the advance notice period.

(c) *Employee's answer.* (1) The agency shall give the employee a reasonable amount of official time to review the material relied on to support its proposal and to prepare an answer and to secure affidavits, if he or she is otherwise in an active duty status.

(2) The agency shall designate an official to hear the employee's oral answer who has authority either to make or recommend a final decision on the proposed adverse action. The right to answer orally in person does not include the right to a formal hearing with examination of witnesses unless the agency provides one in its regulations in accordance with paragraph (g) of this section.

(d) *Exceptions.* (1) 5 U.S.C. 7513(b) authorizes an exception to the 30 days' advance written notice when the crime provision is invoked. The agency may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than seven days. When the circumstances require immediate action, the agency may place the employee in a nonduty status with pay for such time, not to exceed ten days, as is necessary to effect the action.

(2) The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

(e) *Representation.* 5 U.S.C. 7513(b)(3) provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position; or an employee of the agency whose release from his or her official position would give rise to
unreasonable costs or whose
work assignments preclude his
release. 5 U.S.C. 7114(a)(5) a
terms of any applicable collecti
gaining agreement govern repr
tion for employees in an exclusi
gaining unit.
(f) *Agency decision.* In arrivin
written decision, the agency sh
sider only the reasons specified
notice of proposed action and
consider any answer of the em
and/or his or her representativ
to a designated official. The
shall deliver the notice of deci
the employee at or before the ti
action will be effective. The
shall tell the employee of his
appeal rights.
(g) *Hearing.* Under 5 U.S.C. 7
the agency may in its regulatio
vide a hearing in place of or u
tion to the opportunity for
and oral answer.

(5 U.S.C. 7513, 7514, 1302)

[45 FR 46778, July 11, 1980, as ame
48 FR 19340, Apr. 29, 1983, 48 FF
Oct. 6, 1983]

§ 752.405 Appeal and grievance rig

(a) *Appeal rights.* Under the
sions of 5 U.S.C. 7513(d), an em
against whom an action is taken
this subpart is entitled to app
the Merit Systems Protection Bo
(b) *Grievance rights.* 5
7121(e)(1) requires an aggrieve
ployee to elect to appeal unde
subpart or, where applicable, to
grievance under the negotiated
ance procedure, but not both.

§ 752.406 Agency records.

The agency shall maintain co
the items specified in 5 U.S.C. 7
and shall furnish them upon r
as required by that subsection.

Subpart E—Principal Statutor quirements for Taking Adver tions Under the Senior Exe Service

§ 752.501 Principal statutory r ments.

This subpart sets forth for the
fit of the user the statutory re
ments of subchapter V of Chap

— EXHIBIT 3 —

Iwanski, Jerome
Name

East High
Area

8/21/81
Date

206

Mark McBride
Name of employee representative

PATCO
Union/Attorney

John W. Wubbolding
Name of hearing official (FAA)

DIGEST:

The hearing officer opened the hearing by advising that the purpose of this hearing was to allow the employee the opportunity to explain why the proposed action should not be taken. At the request of the union representative Mr. Iwanski read the following statement for the record: "Because I have been accused of striking, I stand mute on the specifics of the allegations against me. However, I would like to take this opportunity to ask some questions about the facts relied upon by the agency in bringing this action. Nothing I say should be regarded as a waiver of my right to be silent." They were requested by the hearing officer to ask questions about the facts relied upon by the agency in bringing this action. At this point the union representative requested that a 30 day extension and 16 hours of official business be granted to prepare his case. He then requested that the attached list of material be provided. He was advised to request the material from the Great Lakes Regional Office under the Freedom of Information Act. He was also advised that item number 2 of his list copies of all materials relied upon to support the proposed removal action were available here for his review. This consisted of the facility schedule for the week of August 2, the facility personnel logs from August 3 thru August 8 and Title 5, paragraphs 7311 on loyality and strikin

The union representative reiterated his request for a 30 day extension and 16 hours of official business, but was denied by the hearing official, predicated on the letter from Mr. Gunter to Mr. Schmitt . He then said he was specificly requesting for Mr. Iwanski and will continue the hearing under protest. Upon inquiry by the union representative I advised that I have no authority in the final decision. My responsibility was to prepare a summary with a recommendation and submitted it to the deciding official.

Mr. Iwanski and the union representative then review ed the supporting documents and the union representative made the following statements: Mr. Iwanski was charged with being absent without leave starting August 6 when he was actually on approved annual leave on August 6. The master schedule shows him on annnual leave for the full week thru August 8. He received his letter of proposed removal on August 10 prior to the time that he was to report for duty on the on 1500 shift. After he received his letter he did not report because the union office had recieved information from other persons who under similar [illegible] circumstances called the facility and were told not to report to work. Therefore Mr. Iwanski should not be fired because the log and schedule show him to be on annual leave. The Union Representative further stated that in his letter of proposed removal it stated "You were aware of a strike." I don't think Mr. Gunter can say that Mr. Iwanski was aware of the strike. The Union Representative said that they were requesting a copy of this summary and upon your inquiry he stated that he did not feel that they had been afforded the opportunit to explain why the proposed action should not be taken, because of the lack of material and inadequate time to prepare the case.

ATTACHED: **Supporting employee evidence**

RECOMMENDATION: **Further Facility discussion** **YES** X **NO** ____

EXHIBIT 4

ORAL PRESENTATION - WORK SHEET #209

RE: CONNOR, ROBERT DATE: 8/25/81 12 30PM

STATEMENTS REQUIRED

		CONTACTED	DATE RECEIVED
FROM	REGARDING		
1. MILLOR R.	CANCELLATION OF A/L	9/1/81	9/2/81 PC
NO PICKETING IN	DICATED		
a. Propose Removal –	8/19/81 Check	Both letters	8/4 8/14
b. Hearing –	8/25/81		
c. 1st SHIFT BACK –	Thursday 1520 8/5		
AFTER A/L →	8-23-81 1330 8/24		
d. Picketing ?			
e. Recommendation	- yes		
f. Removed 9/3/81			
4.			
NOTE: A/L was can	celled by Roger	Miller on	the
Morning of	8/3/81 (Monday)		
5. No contact with	facility		
Did talk to Roge	r Miller on the	17th + 27th	of August.
See statement.			
Signed for P.R.	8/17 + 9/5 we	ll after	Thursday
6. 6th			

FAA Form 3872 [illegible] WORKSHEET, GENERAL PURPOSE (8 X 10½) 0052-431-0000 (1360-1700)

— EXHIBIT 5 —

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CHICAGO REGIONAL OFFICE

CHARLES F. BEHENSKY, JR., et al.,
appellant

v.

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION,
agency.

BRIEF IN SUPPORT OF MOTION TO PERMIT TESTIMONY OF ROBERT MILLER

The Federal Aviation Administration submits the following in support of its request to allow the testimony of Robert Miller.

The attached Affidavit of Mr. Miller supports the position that his testimony is necessary in order to clarify the recordkeeping process. In its Order of February 6, 1984, the Board strongly suggests that ". . ., the Presiding Official may wish to consider the need for eyewitness testimony explaining the process by which the records were created". (Order, page 7) The agency submits that Mr. Miller can provide that explanation.

At the hearing, Mr. Miller was prohibited from testifying due to his presence in the courtroom during previous testimony following an objection by the appellants that the Presiding Official had ordered witnesses to be sequestered. The agency submits that Mr. Miller should now be permitted to testify. The purpose of sequestion is to prevent the possibility of a witness shaping his testimony to match that given by other witnesses. U.S. v. Leggett, [illegible] F.2d 613, 1964.

That Situation does not exist in this case for several reasons. First, the only testimony given with respect to the records was that given by Mr. Gunter. Mr. Gunter, as the Board pointed out, had no firsthand knowledge how the records were kept during the strike. Mr. Miller, on the other hand, does have first hand knowledge. His Affidavit demonstrates that he was responsible for that process. Therefore, his testimony would be based on his actions with respect to those records. It would not be influenced by the testimony of Mr. Gunter, who could only speculate about the actions taken. It is not error for the court to allow the testimony of a person who was not excluded when that person is testifying from his own experience. United States v. Johnson, 345 F2d 457, 1965.

In addition, Rule 615 of the Federal Rules of Evidence, 28 U.S.C. 615, contains an exception to the provision for exclusion of witnesses. Under Rule 615(3) an employee of a party which is not a natural person designated as its representative by its attorney, is not subject to exclusion. Mr. Miller was designated by the agency as its technical representative. The rules do not authorize the exclusion from the courtroom of a government officer or employee who has been designated as its representative. United States v. Williams, 604 F.2d 1102, 1979. This provision is most often applied in the case of investigative agents, where the purpose is to permit the government to have the benefit of the investigator's technical assistance due to his familiarity with the case. U.S. v. Woody, 588 F.2d 1212, 1978. The agency submits that this situation is analogous. Here, Mr. Miller was responsible for the recordkeeping as well as other functions at the facility during the strike and his technical expertise was necessary to the presentation of the government's case. This is particularly so in light of the numerous cases involved in this consolidation.

The exclusion of witnesses also involves the issue of credibility, as it relates to the reliability of a witness's testimony. Here, the opportunity exists to cross examine Mr. Miller as to the foundation for his testimony. They would have an opportunity to attack his credibility in this matter. The Presiding Offical may at the same time observe his demeanor. This way, well over a year has lapsed since the initial hearing in this matter. Given the length of time between the testimony for which Mr. Miller was present and any testimony he might give, the likelihood of unreliability based on that other testimony is remote. It is unlikely that if Mr. Miller testifies, his testimony would be influenced by any testimony given in November, 1982.

Finally, the Board's concern on remand was that the record be clear as to the accuracy of agency records. The goal in this matter is to gather all the facts necessary to reach a conclusion at to that accuracy. The purpose of Mr. Miller's testimony is to present the facts. The facts of which he has firsthand knowledge. Therefore, in order to make the fact finding process complete, it is critical that his testimony be taken.

At the time of the hearing, the agency attempted to secure a witness other than Mr. Miller who could testify on this issue. It was unsuccessful because no other person had the firsthand knowledge of the entire recordkeeping process. This issue requires that knowledge because of the complexity of the issue involved. The agency has, as it did at the hearing, diligently searched for others who could testify on this issue. Such a person cannot be found because, although others were involved in various steps of the recordkeeping process, no one other than Mr. Miller has knowledge of the entire process or can explain how the process was conducted.

— EXHIBIT 6 (cont.) —

In summary, the agency submits that the testimony of Robert Miller is necessary to make the record in this matter complete, that he is exempt from the rule on exclusion of witnesses due to the length of time which has intervened, his position as the agency's technical advisor and the nature of his testimony which will be based on his own factual experience. The appellants will not be prejudiced by his testimony as they may cross examine Mr. Miller as to the reliability of his testimony and may present their own evidence on the issue.

THEREFORE, in order to clarify the record as ordered by the Board, the agency submits that Mr. Miller's testimony be permitted.

Eileen Weikel Johnson
Eileen Weikel Johnson
Designated Agency Representative

FEB 29 1984
Date

— EXHIBIT 6 (cont.) —

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
CHICAGO REGIONAL OFFICE

CHARLES F. ZEMENSKY, JR., et al., appellant	)	
v.	)	DOCKET NUMBER CH075281F0979
DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION, agency.	)	

AFFIDAVIT

I, Robert Miller, am employed by the Federal Aviation Administration as Area Manager at the Chicago Air Route Traffic Control Center (ARTCC), Aurora, Illinois. If permitted to testify in this matter on the issue of recordkeeping at the Chicago Center during the strike by the air traffic controllers union (PATCO), which commenced on August 3, 1981, I would testify as follows:

I. As of August 3, 1981, I was employed at the Chicago Center as the Evaluations Officer.

II. Among the duties assigned to me at that time, in my capacity as the Evaluations Officer, was the responsibility for the formulation and implementation of the Chicago Center Strike Contingency Plan.

III. In addition to the above responsibility, during the period August 3 to September 20, 1981, in the absence of the Chief/ or the Deputy Chief, I acted as Acting Chief of the Chicago Center. As such, I had responsibility for the operation of the entire facility.

IV. During the period commencing August 3, 1981, and continuing for the duration of the strike, I instituted changes to the method of keeping certain official facility records. These changes were necessitated by the need to have the supervisory personnel normally charged with the recordkeeping actually control traffic during the strike.

V. I instituted changes in the method used to make and preserve facility sign-in logs, watch schedules, and time and attendance records.

VI. These changes were done at my direction and were carried out either by myself or by persons delegated by me to perform them.

VII. I will explain changes made, as well as the methods used to carryout those changes.

VIII. I will be able to reconcile apparent inconsistencies which resulted from the change in the manner in which records were kept.

IX. Although the method of recordkeeping changed, the records which are part of the agency's file in each of these cases accurately reflect the dates and times each individual was required to be at work and the dates and times when they were AWOL and on strike.

X. I am the only person who has first hand knowledge of the entire recordkeeping system and the changes made thereto. Other individuals performed only limited tasks and do not have direct knowledge of the overall system of recordkeeping during the strike.

Robert Miller
Robert Miller

SUBSCRIBED AND SWORN TO before me,

this 29th day of February, 1984.

Rosemary K. Hall
Notary Public

My commission expires on My Commission Expires April 26, 1987.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PETER T. NYQUIST,)
)
Plaintiff,)
)
v.) No. 86 C 2352
)
ROBERT L. MILLER, ET AL.,) Judge Ann C. Williams
)
Defendant.)

AFFIDAVIT OF ROBERT L. MILLER

The undersigned, being first duly sworn, deposes and says:

1. I am employed by the Federal Aviation Administration as an Area Manager at the Chicago Air Route Traffic Control Center.

2. During the period of time alleged in the Complaint, I was employed by the FAA in a supervisory position at the Chicago Center.

3. During the period of time alleged in the Complaint, I was performing duties in my capacity as a supervisor and duties assigned to me by George Gunter, the Chief of the Chicago Center.

— EXHIBIT 8 —

4. During the period of time alleged in the Complaint, my involvement with the recordkeeping process regarding documents related to the adverse actions against controllers at the Center was at the direction and order of the Chief, and was in accordance with his instructions.

Robert L. Miller

Robert L. Miller

Subscribed and sworn to before me, this
13th day of August, 1986.

Rosemary K. Hall

Notary Public

My Commission Expires April 26, 1987

— EXHIBIT 8 (cont.) —

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PETER T. NYQUIST,)
)
Plaintiff,)
)
v.) No. 86 C 2352
)
ROBERT L. MILLER, ET AL.,) Judge Ann C. Williams
)
Defendant.)

AFFIDAVIT OF HENRY D. FRENCH

The undersigned, being first duly sworn, deposes and says upon knowledge, information and belief:

1. I am employed by the Federal Aviation Administration as the Assistant Manager for Automation for the Chicago Air Route Traffic Control Center.

2. At the time of the controller strike in 1981, I was the Deputy Chief of the Chicago Center.

3. At the time of the controller strike, Robert L. Miller was the Evaluations Officer, a supervisory position, at the Chicago Center.

— EXHIBIT 9 —

4. Robert L. Miller was at all times acting within the scope of his employment during the period of the strike and during the recordkeeping process involving the documents for the controllers who were fired.

5. I was present when the Chief of the Chicago Center, George Gunter, instructed Mr. Miller to work with the records relating to the controllers who were fired during the strike.

6. Mr. Miller's involvement with the recordkeeping process regarding the documents related to the adverse actions against the controllers was at the direction and pursuant to the instructions of the Facility Chief, Mr. Gunter.

Henry D. French
Henry D. French

Subscribed and sworn to before me, this
14th day of August, 1986.

Rosemary K. Hall
Notary Public
My Commission Expires April 26, 1987

— EXHIBIT 9 (cont.) —

SOBER, PETER J. — **Name**

Flow Controller — **Area**

8/31/81 8:30 — **Date**

None — **Name of employee representative**

None — **Union/Attorney**

#

LeRoy R. McCarthy

LeRoy R. McCarthy — **Name of hearing official (FAA)**

DIGEST:

The hearing convened at 0830, August 31, 1981, at the Hilton Inn, Aurora, Illinois. I expla to Mr. Sober that the purpose of the hearing was to afford him the opportunity to explain wh the proposed action should not be taken. He stated he understood. I also explained that he had the right to have a representative if he wanted to. He stated he did not want one.

Mr. Sober gave me a letter addressed to Mr. Gunter (attached) that he wanted to be included in the report. He explained that Mr. Beeson, Assistant Chief, approved his Annual Leave fro July 27, 1981 to August 17, 1981 and he was out of town during that period. While on leave he made no contact with anyone from the Chicago ARTCC nor was he contacted by anyone, neithe by telephone, letter or telegram. When asked if he was aware of the strike and President Reagan's amnesty he stated he eventually found out about it, after the amnesty ended, but di feel it applied to him because he was on approved Annual Leave. He was out of town with his wife (attached are receipts on lodgings and meals during his Annual Leave signed by Mr. Sobe or his wife Janis).

He stated neither Mr. Beeson nor Mr. White (his immediate supervisor) told him of any condit on which his leave was approved. As far as he was concerned he was on approved Annual Leave for the entire period. On August 16, 1981, he contacted Mr. Edward Froelich at the ARTCC as when to return to work and was told that he could not return because of his failure to retur work previously.

The material on which the notice of proposed removal is based was reviewed, i.e., Facility Area Watch Schedule, Facility Sign-on Log (FAA Form 7230-4) and U. S. Code, Title 5, Section 1918 and 7311. Mr. Sober noted that the Watch Schedule shows him on Annual Leave. He point out that his name does not appear on any of the Facility Sign-on logs from August 2-8, 1981.

Mr. Sober stated he was ready and able to return to work at anytime.

SUMMARY: The conditions under which Mr. Sober's Annual leave was approved should be reviewe to determine the validity of his statements.

ATTACHED: Supporting employee evidence
Attachments

RECOMMENDATION: Further Facility discussion YES X NO ____

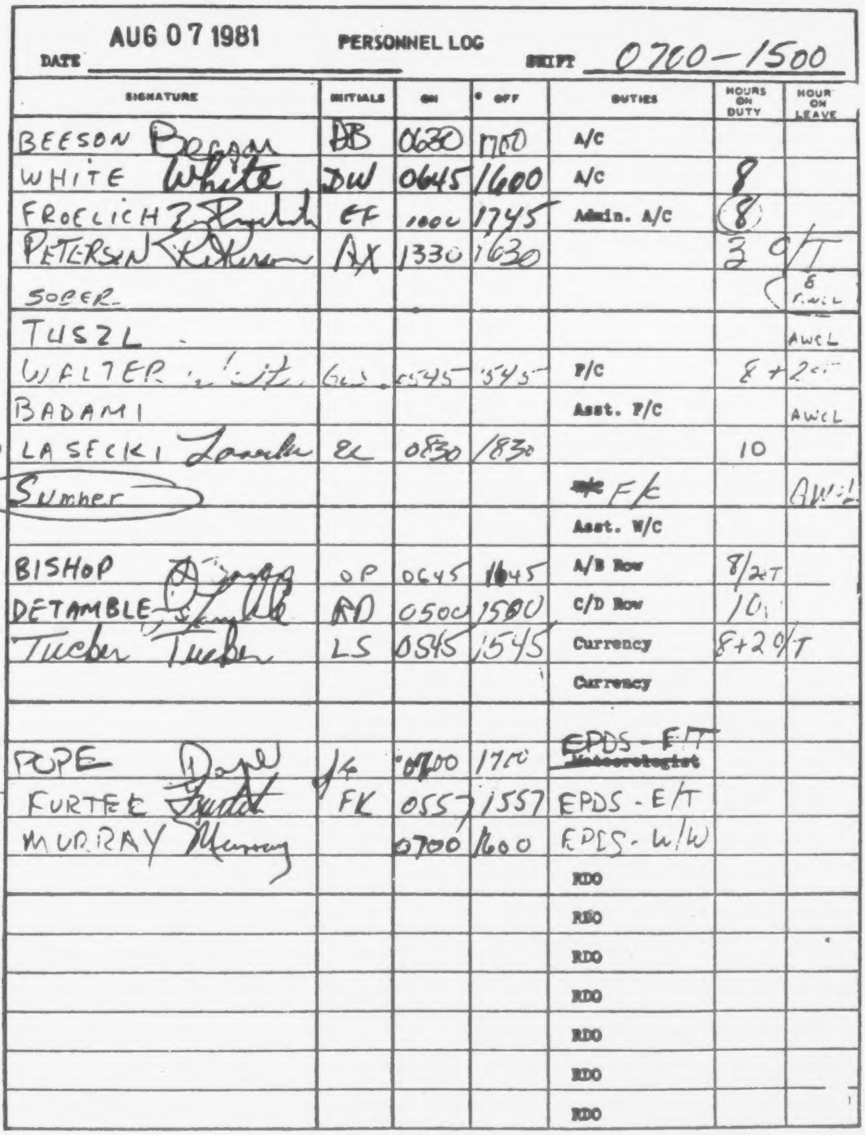
EXHIBIT 10

DATE AUG 07 1981

PERSONNEL LOG

SHIFT 0.700 — 1500

SIGNATURE	INITIALS	ON	OFF	DUTIES	HOURS ON DUTY	HOUR ON LEAVE
BEESON	DB	0630	1700	N/C		
WHITE White	DW	0645	1600	N/C	8	
FROELICH	EF	1000	1745	Admin. A/C	(8)	
PETERSON Peterson	AX	1330	1630		3	O/T
TUSZL						AWOL
WALTER Walter	GW	0545	1545	F/C	8 +	2 OT
BADAMI				Asst. F/C		AWOL
10 LASECKI Lasecki	EL	0830	1830		10	
				W/C		
				Asst. W/C		
BISHOP	OP	0645	1645	A/B Row	8/2T	
DETAMBLE	RD	0500	1500	C/D Row	10	
Tucker Tucker	LS	0545	1545	Currency	8+2 O/T	
				Currency		
POPE	[illegible]	0700	1700	EPDS - E/T ~~Meteorologist~~		
FURTEK	FK	0557	1557	EPDS - E/T		
MURRAY Murray		0700	1600	EPDS - W/W		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		



AUG 0 7 1981

PERSONNEL LOG

DATE AUG 0 7 1981

SHIFT 0700-1500

SIGNATURE	INITIALS	ON	* OFF	DUTIES	HOURS ON DUTY	HOUR ON LEAVE
BEESON	DB	0630	1700	A/C		
WHITE White	DW	0645	1600	A/C	8	
FROELICH	EF	1000	1745	Admin. A/C	8	
PETERSEN Peterson	AX	1330	1630		3	O/T
SOPER						8 [illegible]
TUSZL						AWOL
WALTER	[illegible]	0545	1545	P/C	8 +	2
BADAMI				Asst. P/C		AWOL
10 LASECKI Lasecki	EL	0830	1830		10	
Sumner				F/C		AWOL
				Asst. W/C		
BISHOP	OP	0645	1645	A/B Row	8/2OT	
DETAMBLE	RD	0500	1500	C/D Row	10	
Tucker Tucker	LS	0545	1545	Currency	8+2 O/T	
				Currency		
POPE	JP	0700	1700	EPDS - E/T ~~Meteorologist~~		
FURTEK	FK	0557	1557	EPDS - E/T		
MURRAY Murray		0700	1600	EPDS - W/W		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		

EXHIBIT 10 (cont.)

DATE AUG 07 1981

PERSONNEL LOG

SHIFT 0700-1500

SIGNATURE	INITIALS	ON	OFF	DUTIES	HOURS ON DUTY	HOURS ON LEAVE
BEESON	DB	0630	1700	A/C		
WHITE White	DW	0645	1600	A/C	8	
FROELICH	EF	1000	1745	Admin. A/C	8	
PETERSEN Peterson	AX	1330	1630		3	O/T
SOBER						E AWCL
TUSZL						AWCL
WALTER Walter	GW	0545	1545	P/C	8 +	2OT
BADAMI				Asst. P/C		AWCL
10 LASECKI	EL	0830	1830		10	
				W/C		
				Asst. W/C		
BISHOP	DP	0645	1645	A/B Row	8/2OT	
DETAMBLE	RD	0500	1500	C/D Row	10	
Tucker Tucker	LS	0545	1545	Currency	8+2 O/T	
				Currency		
POPE Pope	JG	0700	1700	EPDS - E/T ~~Meteorologist~~		
FURTEK Furtek	FK	0557	1557	EPDS - E/T		
MURRAY Murray		0700	1600	EPDS - W/W		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		
				RDO		

EXHIBIT 10 (cont.)

[illegible]
[illegible] 5-21-

COMPLETED PACKETS DELIVERED TO REGIONAL OFFICE September 14, 1981

1. ABARR, D.G.
2. ALLAN, R.

4. ANDERSON, D.
5. ANDERSON, D.C
6. ANDERSON, L.
7. ANDERSON, R.
8. ANDERSON, T.L.
9. ANDREWS, R.S.
10. ANTROBUS, T.D.
12. AUBREY, R.D.
13. BABARSKIS, V.
15. BACH, F.T.
16. BADAMI, J.D.
17. BAKER, R.
19. BALASH, P.R.
20. BARAN, H. J.
21. BECKER, M.
23. BEDDOW, R.E.
24. BEHENSKY, C.
25. BELMAR, N.J.
26. BENSON, K.
28. BERG, M.
30. BERGSTROM, R.
31. BIAMI, C. W.
32. BICE, J.E.
35. BOHR, P.J.
36. BOLTON, R.C.
37. BOYLAN, J.M.
38. BOZYCH, R.R., Jr.
40. BRANDIS, R.J.
43. BROHOLM, A.A.
44. BRONGER, W.A.
47. BROWN, C.
48. BROWN, F.
50. BUDZYNSKI, R.J.
52. BURKHART, R.
54. CAMPBELL, J.A.
57. CARDINAL, J.T.
58. CARLSON, E.R.
62. CARROLL, B.
66. CEPEDA, T.,Jr.
68. CICHON, M.C.
70. CLARK, J.
71. CLAVEY, R.
73. CLINE, MA.
74. CLOUSER, T.
77. COLLINS, D.W.
78. COLLINS, M.W.
80. COLLINS, R.K.
81. CONNOR, R.E.
82. CONROY, B.
87. CRENNA, F.J.
92. DAVIS, D.
94. DAWSON, S.
96. DEJONG, J.
97. DELUTRI, R.S.
98. DEMAR, P.J.

99. DEMMIN, J.H.
100. DERTZ, R.J.
101. DEVAULT, K.
102. DEVAULT, R.
103. DIEZI, L.
105. DIKE, C.
106. DOBBERT, R.
107. DOMBROWSKI, T.M.
108. DOYLE, F.M.
109. DRAEGER, G.A.
110. DRESDEN, K.R.
111. DRYDEN, A.
112. DUFFY, B.P.
113. EDEN, L.M.
114. EDWARDS, R.A.
116. ELLIS, J.
118. ERDMAN, D.
119. FAILOR, A.R.
120. FARRADAY, S.R.
122. FELHAUER, L.
123. FINNEGAN, J."
124. FLEMING, E.
125. FLIEARMAN, T.G.
127. FOOSE, G.
128. FORYS, D. J.
129. FOX, D.
131. FRIELINK, R.E.
132. GALLUCCI, G.
133. GARBE, W.R.
136. GATZ, T.
137. GERBITZ, A.
140. GOEDKE, R.
141. GOIN, M.H.
144. GORMAN, J.W.
148. GRON, D.J.
149. GROW, R.P.

75. CNOTA, W.

94

RECEIVED BY ____________________

.. DATE____________________

— EXHIBIT 11 —

REQUEST A

COMPLETED FILES SENT TO REGIONAL OFFICE, Sept. 15, 1981

41. BRANNEN, E.D.
51. BURGARD, J.F.
53. BURNS, R.W.
56. CAPITELLI, D.S.
65. CENTER, R.J.
83. CRIST, M.R.
89. CROOK, R.R.
91. DAVIDS, B.
93. DAVIS, J.L."
117. ENGEL, S.K.
126. FONTANA, J.
130. FRIEDRICH, H.W.
150. GUSTAFSON, P.E.
151. HAFEMAN, R.L."
152. HALL, S.F.
153. HAMER, L.W.
154. HAMILTON, R.L.
155. HAMILTON, W.L.
158. HARDY, W.
159. HARRIS, W.E.
160. HEDMAN, G.H.
161. HEEG, D.
162. HEFFERN, W.
163. HEFFERNAN, J.A.
166. HEMMINGSEN, D.
167. HENDRICKS, A.
169. HENSLEY, D.
170. HERAK, R.
172. HERMANSON, D.L.
173. HERMES. L.
175. HETH, D.L.
179. HINSHAW, R.J.
180. HOENIG, A.F.
181. HOFFMAN, F.L.
182. HOFMAN, N.E.
184. HOLIC, J.W.
187. HOWE, R.S.
188. HUDDLESTON, D.
189. HUEBNER, T.R.
192. IBSEN, R.E.
193. IWANSKI, J.L.
197. JARNECKE, D.R.
202. KACPROWICZ, F.
204. KARP, D.
206. KAY, T.
207. KEEBAUGH, C.
208. KEHE, S.
209. KELLY, A.
211. KEMPHUES, J.
212. KENNY, J.
216. KIESLER, W.
218. KING, D.E.
219. KING, M.J.
220. KINGERY, W.
222. KLAVOHN, R.
223. KLEIN, R.J.
225. KOHUT, K.
226. KOONTZ, T. J.
227. KRIZMANIC, B.
228. KUHLMAN, J.
229. KUKLA, T.
230. LABODA, R.
231. LACY, M.
232. LAECHELT, L.
233. LAING, W.
234. LAMBRECHT, R.
238. LASKEY, C.
241. LECKBEE, T.
243. LENTZ, T.
244. LESIAK, K.
246. LEWIS, R.
247. LISSAK, A.
250. LOWRY, J."
254. LYDON, P.

74

RECEIVED BY____________________

DATE____________________

REQUEST A

— EXHIBIT 11 (cont.) —

COMPLETED FILES SENT TO REGIONAL OFFICE, Sept. 16, 1981

194. JACOBSON, C.A.
200. JORDAN, P.
240. LAWSON, C.
256. MACKINLAY, W.
257. MAHLBERG, T.
258. MALESKI, T.
259. MANN, R.
260. MANUEL, E.
261. MARCHIEL, W.
263. MARRINER, S.
264. MARSZALEK, J.
265. MARTIN, D.
266. MARTINEZ, L.
267. MASSON, D.
268. MAYES, R.L.
269. MC BRIDE, M.
270. MC CLINTOCK, J.
271. MC CORMACK, W.
272. MC GHINNIS, L.
273. MC GOUGH, D.
275. MC GUIRE, R.
276. MC KAY, G.
278. MC LEAN, J.
279. MC NEAL, T.
280. MC QUINLEY, M.
281. MEEHAN, J.
284. MESTER, M.
285. MILLER, R.H.
286. MILLER, T.E.
287. MILLER, T.J.
288. MILLS, W.
289. MITCHELL, T.
290. MOEN, J.
292. MORRIS, H.
293. MORSE, C.
295. MROTEK, R.
296. MURPHY, B.

21

— EXHIBIT 11 (cont.) —

COMPLETED FILES SENT TO REGIONAL OFFICE, SEPT. 17, 1981

42. BRETALL, D.J.
59. CARLSON, G.
61. CARLSON, R.B.
85. COUGHLIN, T.
135. GARVIN, E.
145. GRABOWSKI, E.P.
146. GRAY, A.H., Jr.
165. HEHR, T.
297. MURPHY, W.
298. NELSON, C.
302. NICHOLAS, G.
303. NICHOLS, J.
304. NOFFKE, K.
306. NUERNBERG, W.
307. NYQUIST, P.
308. O'BOYLE, S.
30[illegible] O'BRIEN, J.
[illegible] O'BRIEN, R.A.
311. O'CONNOR, D.
312. O'GRADY, D.
313. O'HARROW, P.
315. OKON, W.
317. OLSON, R.
318. OTTENS, W.
320. OWENS, R.
321. PARRU, M.G.
322. PASCHAL, J.
323. PATTERSON, P.
324. PAULEY, J.
325. PAULOCZAK, J.
327. PEARSON, J.
328. PETERSON, C.
329. PETERSON, L.R.
330. PFINGSTON, S.
391. SIMS, C.
171. HERDMAN, L.A.
183. HOGAN, C.H. Jr.
186. HORTON, C.L.
203. KALLAY, W.
214. KERN, C.
251. LOWERY, J.
252. LUCAS, D.

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REQUEST A
Pg 9

COMPLETED FILES SENT TO REGIONAL OFFICE, September 18, 1981

299. NELSON, D.
300. NELSON, G.
301. NEUKIRCH, B.
331. PFLEGHAAR, S.
332. PICARD, R.
335. POPOVITCH, K,
336. POWLES, J.
337. PRESTON, W.
338. PRICE, W.
339. PRIESSMAN, R.
340. PROKOPEC, R.
342. RADNOFF, R.
343. RANIERI, R.
345. RECKART, D.
346. REED, W.
347. REEDY, M.
348. REICHERT, R.
349. REILLY, A.
350. REPKO, J.
351. RICE, C.'
352. RICKETTS, J.
353,. RING, D.
354. RISTOFF, C.
355. ROBB, R.
356. ROBERTS, B.
358. ROCHE, J.
360. ROHLFING, R.
361. ROLLER, W.
362. ROMASHKO, D.
363. ROOT, R.
364. ROSZKOWSKI, J.
365. ROWELL, D.
366. RUDD, S.
367. RUPPERT, E.
368. RUSCHKEWICZ, P.
369. RUSSELL, D.
370. RUSSELL, S.
372. SANBORN, C.
373. SANDERS, K.
374. SCHALKE, T.
375. SCHARENBERG, D.
376. SCHMAUS, G.
377. SCHMITT, J.
378. SCHUEMANN, D.
380. SCHULTZ, M.
381. SCHWENKE, H.
382. SCOTT, R.
383. SIEBOLD, W.
384. SETCHELL, F.
385. SETTERGREN, V.
386. SHANNON, J.
387. SHAUL, J.
388. SHOGER, R.
390. SIMMS, J.
392. SLABIK, M.
393. SMIESZEK, E.
394. SMITH, L.
395. SMITH, M.

396. SMITH, R.
397. SNOW, C.
398. SOIKIN, R.
400. SPRINGER, G.
401. STAFFIN, D.
402. STAFFORD, A.
403. STAHLBERG, L.
404. STEINBORN, M.
406. STERNBERG, R.
408. STEWART, N.
411. SUMNER, J.
412. SUNDBERG, W.
413. TAGGART, M.
414. TAYLOR, O.
415. TENNIS, J.
416. TERRY, P.
418. THEODORE, H.
419. THOMPSON, J.
421. THOMAS, D.
423. TOMASI, A.
424. TOPE, D.
425. TRACY, N.
426. TUSZL, J.
427. VANDERBEKE, J.
429. VANFLEET, R.
431. VETTORI, W.
432. VEVERKA, A.
433. VOGEL, J.
434. VOGELPOHL, F.
435. VOLPE, V.
436. VOSS, R.
437. WALTER, T.
438. WALTON, C.
439. WEBB, S.
440. WEBER, J.
441. WEBER, R.
442. WENDLING, M.
443. WEST, H.
447. WHITE, N.
448. WICKHAM, A.
449. WIEDMER, T.
450. WIELOSINSKI, M.
451. WIERSMA, D.
455. WILTJER, R.
456. WINZ, J.
457. WOLNY, W.
458. WOOD, B.
459. WRIGHT, R.
460. YEARY, A.
462. ZAREMBA, F.

PROBATIONARIES

34. BLUSIEWICZ, R.
99. DANIELS, S.
134. GARRISON, C.
143. GORE, R.
195. JANAES, T.
196. JANSKI, R.
199. JONES, J.
235. LANDERS, D.
237. LARSON, L.
239. LAVELLE, M.
253. LUETHY, F.
277. MC KINNEY, J.
422. TODD, J.
428. VANDERBLOOMEN, D.

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— EXHIBIT 11 (cont.) —

REQUEST A

COMPLETED FILES SENT TO REGIONAL OFFICE, September 23, 1981

14. BABIARZ, G.
18. BATDORF, J.
76. COLCLASURE, D.L.
93. DEHAINAUT, L.E.
142. GORALEWSKI, A.F.
156. HANRAHAN, M.F.
157. HARDY, T.
205. KARSTEN, R.
224. KLINE, M.
255. MACK, R.
283. MERRITT, W.
291. MONTGOMERY, G.
359. RODERICK, K.
379. SCHULTZ, E.
405. STENERSON, E.
410. STUPEC, J.
453. WILLER, R.
454. WILSON, J.
463. ZIOLKOWSKI, D.

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REQUEST A
Pg 6

— EXHIBIT 11 (cont.) —

COMPLETED FILES SENT TO REGIONAL OFFICE, September 25, 1981

2. AKEY, S.M.
22. BECKER, R.
27. BERGAN, J.A.
29. BERGE, D. B.
46. BROSCH, E.
55. CAMPO, G.
79. COLLINS, R.J.
86. COX, R.K.
105. DIRZUWEIT, T.
168. HENRY, P.M.
177. HIGGINS, J.
185. HOOCHKIRK, G.
201. JOWERS, J.
210. KEMM, N.
213. KENT, W.L.
217. KING, D.A.
236. LANGDON, C.
248. LOCKHART, N.
282. MEILER, K.
305. NOREN, D.
315. OLSON, J.
398. SOBER, P.

REQUEST A

— EXHIBIT 11 (cont.) —

COMPLETED FILES SENT TO REGIONAL OFFICE, September 28, 1981

60. CARLSON, R.A.
69. CLARK, D.C.
72. CLEARY, J.R.
83. CONTI, W.
138. GEROVAC, L.S.
139. GILLETTE, R.L.
147. GREEN, L.C.
174. HESS, J.
178. HIMMELMAN, D.J.
198. JOHNSON, D.
221. KISH, D.
242. LEE, T.A.
249. LOGERQUIST, D.
274. MC GUINNESS, M.
294. MOSES, H.
314. OBREMSKI, D.
319. OWENS, G.
326. PEACOCK, J.
333. PIORKOWSKI, P.
334. PLUCINSKI, A.
341. PRZYLUCKI, S.
344. RASMUSSEN, L.
407. STEVENS, E.
409. STEWART, R.
420. THOMAS, A.J.
475. TOEPFER, T.A.
444. WEST, P.
445. WETHERN, C.
115. ELWARDT, H.

29

— EXHIBIT 11 (cont.) —

REQUEST A Pg 8

COMPLETED FILES TAKEN TO THE REGIONAL OFFICE, October 1, 1931

47. BRUCK, K.

371. SALVAGGIONE, C

389. SIERGEY, W.

417. THALMAN, T.

430. VAUGHN, T.

452. WIESBAUER, K.

461. YOUNG, G.

MULTIPLE COPIES OF ATTENDANCE RECORDS SENT TO REGIONAL OFFICE, Oct. 1, 1931

* 34. BLUSIEWICZ, R.
* 90. DANIELS, S.
* 134. GARRISON, C.
* 143. GORE, R.
* 195. JANAES, T.
* 196. JANSKI, R.
* 199. JONES, J.
* 235. LANDERS, D.
* 239. LAVELLE, M.
* 253. LUETHY, F.
* 277. MC KINNEY, J.
* 422. TODD, J.
* 425. VANDERBLOOMEN, D.

* NOTE: These are all Probationaries and will not have a hearing officer letter of authorization included.

ALL ENVELOPES BEARING RED FILE NUMBERS IN UPPER RIGHT CORNER WILL CONTAIN ONLY COPIES OF: T&A's
LOGS
SCHEDULES
HEARING OFFICER AUTHORIZATIO

U.S. Department
of Transportation
Federal Aviation
Administration

Great Lakes Region

2300 East Devon Avenue
Des Plaines, Illinois 60018

NOV 16 1981

Mr. R. J. Payne
Regional Director
Merit Systems Protection Board
230 South Dearborn Street, 31st Floor
Chicago, Illinois 60604

Dear Mr. Payne:

This is in reference to the appeal of Timothy P. Clauser, Chicago Center

1. The appellant has neither filed a grievance nor a formal complaint of discrimination in connection with this appeal.

2. Enclosed as Tab 1 is the notice of proposed adverse action.

3-4. Enclosed as Tab 2 is the appellant's written reply and the summary of his oral presentation, (where applicable.)

5. Enclosed as Tab 3 is the notice of decision.

6. Enclosed as Tab 4 is the SF-50 documenting the action under appeal.

7. Evidence of the dates the appellant received the notices are documented with those letters enclosed as Tab 1 and 3 respectively.

8. Evidence relied upon is enclosed as Tab 5. Part of the evidence relied upon by the agency is the daily facility sign-in logs. We have included only those daily sign-in logs pertaining to the appellant. However, it is possible that during the removal process, the appellant had occasion to review the sign-in logs for the entire facility.

9. We deny all allegations raised by the appellant.

I certify that the above information is true and correct and copies of all materials are true copies.

Sincerely,

Richard P. Shewfelt

Richard P. Shewfelt
Chief, Labor Relations Branch

Enclosures

EXHIBIT 12

PACKAGES TO REGIONAL OFFICE

BOX 5

2. AKEY, S.M.
242. LEE, T.
247. LISSAK, A.
250. LOWRY, J.
254. LYDON, P.
256. MACKINLAY, W.
257. MAHLBERG, T.
258. MALESKI, T.
260. MANUEL, E.
259. MANN, R.
264. MARSZALEK, J.
266. MARTINEZ, L.
268. MAYES, R.
269. MC BRIDE, M.
273. MC COUGH, D.
278. MC LEAN, J.
287. MILLER, T. J.
308. O'BOYLE, S.
315. OKON, W.
317. OLSON R.
320. OWENS, R.
321. PARR, M.
323. PATTERSON, P.
330. PFINGSTON, S.
331. PFLEGHAAR, S.
335. POWLES, J.
338. PRICE, W.

(10-23-81)

27

BOX 6

227. KRIZMANIC, B.
263. MARRINER, S.
272. MC GINNIS, L.
276. MC KAY, G.
280. MC QUINLEY, M.
284. MESTER, M.
289. MITCHELL, T.
296. MURPHY, B.
297. MURPHY, W.
298. NELSON, C.
309. O'BRIEN, J.
310. O'BRIEN, R.
325. PAULOCSAK, J.
327. PEARSON, J.
335. POPOVITCH, K.
337. PRESTON, W.
349. REILLY, A.
350. REPKO, J.
351. RICE, C.
352. RICKETTS, J.
353. RING, D.
354. RISTOFF, G.
355. ROBB, R.
358. ROCHE, J.
359. ROHLFING, P.
363. ROOT, P.
365. RUDD, S.
367. RUPPERT, T.
369. RUSSELL, D.
370. RUSSELL, S.
373. SANDERS, K.
374. SCHALKE, T.
375. SCHARENBERG, D.
376. SCHMAUS, C.
378. SCHUMANN, D.

(10-26-81)

35

BOX 7

380. SCHULTZ, M.
383. SIEBOLD, W.
384. SETCHELL, F.
391. SIMS, C.
392. SLABIK, M.
393. SMIESZEK, F.
397. SNOW, C.
400. SPRINGER, G.
401. STAFFIN, D.
403. STAHLBERG, L.
404. STEINBORN, M."
406. STERNBERG, R.
409. STEWART, W.
411. SINGER, J.
412. SINDBERG, W.
413. TAGGART, W.
415. [illegible], I.
416. TERRY, P.
419. THEODORE, W.
427. VANDERBEKE, J.
432. VEVERKA, A.
433. VOGEL, J.
434. VOGELPOHL, F.
437. WALTER, T.
438. WALTON, C.
439. WEIR, S.
442. WENDLING, M.
443. WEST, W.
448. WIEGMAN, A.
449. WIEDNER, T.
455. WILTNER, R.
458. WOOD, R.

(10-27-81)

3[illegible]

BOX 8

1. ABARR, D.G.
4. ANDERSON, D.D.
14. BABIARZ, C.
17. BAKER, R.
21. BECKER, M.
22. BECKER, R.
27. BERGAN, J.A.
29. BERGE, D.R.
41. BRAATEN, F.D.
42. BRETALL, D.J.
46. BROSCH, F.
47. BROZEL, C.
48. BROWN, P.
49. BRUCK, K.
51. BURCARD, J.P.
53. BURNS, R.W.
55. CAMPO, G.
56. CAPPITELLI, D.
59. CARLSON, C.
60. CARLSEN, R.A.
65. CENTER, R.J.
69. CLARK, D.C.
72. CLEARY, J.P.
75. CNOTA, W.
76. COLCLASURE, D.L.
79. COLLINS, R.J.
80. COLLINS, R.K.
85. COUGHLIN, T.
86. COX, R.K.

(10-30-81)

29

— EXHIBIT 13 —

COPIES OF RECORDS SENT TO REGIONAL OFFICE

BOX 9

87. CRENNA, F. J.
88. CRIST, M.
89. CROOK, R.
91. DAVIDS, B.
93. DAVIS, J.
95. DEHAINAUT, L.
105. DIRZUWEIT, T.
111. DRYDEN, A.
115. ELWARDT, H.
117. ENGEL, S.
120. FARRADAY, S.
123. FINNEGAN, J.
126. FONTANA, J.
127. FOOSE, G.
128. FORYS, D.
130. FRIEDRICH, H.
132. GALLUCCI, G.
133. GARBE, W.
135. GARVIN, E.
137. GERBITZ, A.
138. GEROVAC, L.
139. GILLETTE, R.
142. GORALEWSKI, A.
145. GRABOWSKI, E.
146. GRAY, A.
149. GROW, R.
154. HAMILTON, R.L.
155. HAMILTON, W.L.
156. HANRAHAN, M.

10-30-81

29

BOX 10

83. CONTI, V.
157. HARDY, T.
165. HEHR, T.
166. HEMMINGSEN, D.
169. HENRY, P.
170. HERAK, R.
171. HERDMAN, L.A."
174. HESS, J.
177. HIGGINS, J.
182. HOFMAN, W.E.
183. HOGAN, C.H.
185. HOOGHKIRK, G.
186. HORTON, C.L.
198. JOHNSON, D.
200. JORDAN, P.
201. JOWERS, J.
203. KALLAY, V.
206. KAY, T.
208. KEHE, S.
210. KEIBL, H.
214. KERN, C.
217. KING, D.A.
218. KING, D.F.
221. KISH, D.
205. KARSTEN, P.

(11-4-81)

25

BOX 11

222. KLAVOHN, R.
228. KUHLMAN, J.
230. LAING, W.
234. LAMBRECHT, R.
236. LANGDON, C.
241. LECKBEE, T.
243. LENTZ, T.
244. LESIAK, K.
246. LEWIS, R.
248. LOCKHART, N.
249. LOGEROUIST, D.
251. LOWERY, J.
252. LUCAS, D.
255. MACK, R.
261. MARCHIEL, W.
267. MASSON, D.
270. MC CLINTOCK, J.
271. MC CORMACK, W.
274. MC GUINNESS, M."
275. MC GUIRE, R.
279. MC NEAL, T.
281. MEEHAN, J.
282. MEILER, K.
283. MERRITT, W.
286. MILLER, T.E.
288. MILLS, W.
290. MOEN, J.
291. MONTGOMERY, G.
292. MORRIS, H.
18- BATDORF

(11-4-81)

30

BOX 12

260. LAWSON, C.
294. MOSES, H.
295. MROTEK, R.
298. NELSON, C.
299. NELSON, D.
301. NEUKIRCH, R
302. NICHOLAS, C.
303. NICHOLS, J.
304. NOFFKE, K.
305. NOREN, D.
306. NUERNBERG,
307. NYQUIST, R.
311. O'CONNOR, D.
313. O'HARRIN, R.
314. OBREMSKI, D.
316. OLSON, L.
318. OTTENS, W.
319. OWENS, G.
322. PASCHAL, L.
326. PEACOCK , L.
328. PETERSON, C.
329. PETERSON, L.
333. PIORKOWSKI,
334. PLUCINSKI,
339. PRIESSMAN,
340. PROKOPEC, R.

11-5-81

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— EXHIBIT 13 (cont.) —

BOX 13

213. KENT, W.
312. O'GRADY, D.
341. PRZYLUCKI, S.
342. RADNOFF, R.
343. RANIERI, R.
344. RASMUSSEN, L.
345. RECKART, D.
346. REED, W.
356. ROBERTS, B.
359. RODERICK, K.
364. ROSZKOWSKI, J.
365. ROWELL, D.
368. RUSCHKEWICZ, P.
371. SALVAGGIONE, C.
372. SANBORN, C.
377. SCHMITT, J.
379. SCHULTZ, E.
381. SCHWENKE, H.
385. SETTERGREN, V.
388. SHOGER, R.
389. SIERGEY, W.
394. SMITH, L.
396. SMITH R.
398. SOBER, P.
399. SOMKIN, R.

25

BOX 14

387. SHAUL, J.
405. STEVENSON, E.
407. STEVENS, E.
409. STEWART, R.
410, STUPEC, J.
416. TAYLOR, O.
417. THALMAN, T.
419. THOMPSON, J.
420. THOMAS A. J.
421. THOMAS D.
425. TOEPFER, T.
430. VAUGHN, T.
431. VETTORI, W.
436. VOSS, R.
440. WEBER, J.
441. WEBER, R.
444. WEST, R.
445. WETHERBY, C.
447. WHITE M.
450. WIELOSINSKI, M.
451. WIERSMA, D.
452. WIESBAUER, W.
453. WILLER, R.
454. WILSON, J.
455. WINZ, J.
457. WOLNY, W.
460. YEARY, A.
461. YOUNG, C.
462. ZAREMBA, E.
463. ZIOLKOWSKI, D.

30

PERSONNEL ON LEAVE DURING WEEK OF 8/2/81

	FILE #		
1.	ok 3		ALAN, R.
2.	ok 4		ANDERSON, D.D.
3.	ok 13		BABARSKIS, V.
4.	ok 22		BECKER, R.
5.	ok 27		BERCAW, J.A.
6.	ok 31		BIAMI, C.W.
7.	35 —	✓	BOHR, P.J.
8.	36 —		BOLTON, R.C.
9.	ok 44		BRONGER, W.A.
10.	ok 49		BRUCK, K.S.
11.	53 —		BURNS, R.W.
12.	ok 77		COLLINS, D.W.
13.	ok 81		CONNOR, R.E.
14.	ok 113		EDEN, L.
15.	ok 120		FARRADAY, S.R.
16.	ok 137		GERBITZ, A.
17.	ok 139		GILLETTE, R.L.
18.	146 +		GRAY, A.H. Jr.
19.	ok 165		HEHR, T.
20.	ok 174		HESS, J.
21.	179 —		HINSHAW, R.J.
22.	182 —	✓	HOFMAN, NE.
23.	183 —		HOGAN, C.H. Jr.
24.	193 —		IWANSKI, J.L.
25	ok 197		JARNECKE, D.R.
26.	ok 198		JOHNSON, D.
27.	ok 213		KENT, W.L.
28.	217 +		KING, D.A.
29.	ok 224		KLINE, M.
30.	234 —		LAMBRECHT, R.
31.	ok 242		LEE, T.A.
32.	ok 255		MACK, R.
33.	ok 265		MARTIN, D.
34.	271 —		MC CORMACK, W.
35.	285 —	✓	MILLER, R.H.
36.	ok 293		MORSE, C.
37.	ok 307		NYQUIST, P.
38.	ok 329		PETERSON, L.R.
39.	ok 389		SIERGEY, W.
40	ok 398		SOBER, P.
41	ok 407		STEVENS, E.
42	ok 475		TOEPFER, T.A.
43	ok 435		VOLPE, V.
44	452 +		WIESBAUER, K.

— EXHIBIT 14 —

December 15, 1981

On Monday, December 7, 1981 at 9:00 a.m., Messrs Wes Walker, Dick Schufelt, George Gunter and Robert Miller meet in the Regional Office to discuss the attached list of Chicago Center personnel who had leave involved the first week of the strike.

Of the list of 44 names, the Regional Office agreed that 31 of the cases were adequate as submitted; three were marginal; and 10 needed additional data to be relatively strong cases to the MSPB.

— EXHIBIT 14 (cont.) —

CHICAGO CENTER PERSONNEL ON LEAVE

(FILE #)

OK	1.		3	ALLAN, R.	✓ 5 ET
OK	2.		22	BECKER, R.	✓ 8 EH
	3.	+	35	BOHR, P.J.	✓ 4 EW
	4.	+	36	BOLTON, R.C.	✓ 7 ET
	5.	+	53	BURNS, R.W.	✓ 1 WW
OK	6.		77	COLLINS, D.W.	✓ 5 ET
OK	7.		81	CONNOR, R.E.	✓ 1 NW
Ok	8.		113	EDEN, L.	✓ 5 WW
OK	9.		137	GERBITZ, A.	✓ 5 EH
OK	10.		139	GILLETTE, R.L.	✓ 4 WW
	11.	[illegible]	146	GRAY, A.H. Jr.	✓ 6 WT
OK	12.		165	HEHR, T.	✓ 3 EH
	13.	+	179	HINSHAW, R.J.	✓ ~~2 EH~~ 1 WH
	14.	+	182	HOFMAN, N.E.	2 WW ✓
	15.	+	183	HOGAN, C.H. Jr.	1 EW ✓
	16.	—	193	IWANSKI, J.L.	3 EH ✓
OK	17.		197	JARNECKE, D.R.	2 EH ✓
OK	18.		213	KENT, W.L.	3 EW ✓
	19.		217	KING, D.A.	1 WT ✓
	20.	+	234	LAMBRECHT, R.	7 EW ✓
OK	21		242	LEE, T.A.	6 WW ✓
OK	22		265	MARTIN, D.	3 WH ✓
	23.	+	271	MC CORMACK, W.	01 WH ✓
	24	+	285	MILLER, R.H.	5 WW ✓
OK	25		307	NYQUIST, P.	07 ET ✓
OK	26		329	PETERSON, L.R.	06 WT ✓
OK	27.		389	SIERGEY, W.	01
OK	28.		398	SOBER, P.	FC
OK	29.		407	STEVENS, E.	0
OK	30.		475	TOEPFER, T.A.	
OK	31		435	VOLPE, V.	05
	32	6WH	452	WIESBAUER, K.	

EXHIBIT 14 (cont.)

addition to appeal file (noted on 11/4/82 at onset of hearing)

[illegible] 11-4-82

STATEMENT FOR RECORD

On August 2, 1981, I worked a 12-8 shift, and attempted to contact Mr. Iwanski regarding the possibility of a "job action" on August 3, 1981, and the cancellation of his Annual Leave in the event of that action.

I talked to his wife, as he wasn't home, and relayed the message to her asking him to call in on August 3, 1981, to determine his work schedule. Her reply was, "he is in the middle of a lake fishing and I don't know if I will see him."

Due to the discussions on a daily basis, prior to August 2, 1981, in my mind, Mr. Iwanski was aware that if a job action did occur, his Annual Leave was cancelled.

Wayne Winslow

WAYNE WINSLOW
Team Supervisor
#3 EH

— EXHIBIT 15 —

EXHIBIT 16

FOR OFFICIAL USE ONLY

[illegible] notified 12/[illegible]
time: 1900 Received Statement

EH crew 3 Wayne Winslow

TO BE OPENED BY ADDRESSEE ONLY →

I WANSKI, J
maybe

#206

FOR OFFICIAL USE ONLY

FAA Form 1360-39 (7-70) SUPERSEDES ALL LOCAL FORMS USED FOR THIS PURPOSE.

12/8/81

MEMO FOR RECORD

I was directed by Mr. Beeson to contact all East Wing personnel on Annual Leave. They were to contact the Center on the following Monday because of Annual Leave being cancelled if there was a job action or a strike.

I specifically remember calling Bob Lambrecht and advising him of this fact. In my mind, he understood what was required of him if he were on Annual Leave.

The following weeks the subject of cancelled Annual Leave was brought up several times and he insisted that it was not legal to cancel approved Annaul Leave.

In my mind, he understood that if there were a job action/strike his Annual Leave was cancelled.

Sy Kok

SY KOK

— EXHIBIT 16 (cont.) —

12/9/81

MEMO FOR RECORD

In a conversation with Mr. Hinshaw, I was trying to persuade him to take a position as a temporary Team Supervisor. He indicated his unwillingness to take the position, giving his reason as being if PATCO did strike, he was obligated to go out with them.

There is no doubt in my mind that Mr. Hinshaw was aware that if a job action occurred his Annual Leave would be cancelled and that he would be required to return to work.

BILLY E. MINGUS

— EXHIBIT 16 (cont.) —

December 17, 1981

MEMO FOR RECORD

Reference: ROBERT H. MILLER, #3 WW

During conversations in May and June, 1981, with controllers, either me or by other Team Supervisors in the West Wing, it was generally understood that personnel on Annual Leave regardless of their location would contact this facility (Chicago Center) to determine their work status. It was obvious that this would hold true for any work action that might take place throughout the year.

It is my opinion that Mr. R. H. Miller was well aware that he should contact Chicago Center and determine his work status as soon as he was aware that a work action occurred. To my knowledge Mr. R. H. Miller did not contact this facility to determine his status until he was given a notice of proposed suspension.

JAMES E. MARTINSON
Team Supervisor

— EXHIBIT 16 (cont.) —

12/9/81

MEMO FOR RECORD

William McCormack was on my crew in West High Altitude. He and my other crew members were involved in numerous conversations with me, reference job action and the Agency's stand.

There is no doubt in my mind that Mr. McCormack was aware that if a job action occurred his Annual Leave would be cancelled and that he would be required to return to work.

BILLY E. MINGUS

— EXHIBIT 16 (cont.) —

JUL 03 1981

PERSONNEL LOG

Mids

SIGNATURE	INITIALS	ON	OFF	DUTIES	HOURS ON DUTY	HOURS ON LEAVE
FISHER Dan Fisher	FR	2230	0630	ASST. CHIEF	8	
				FLOW/WX		
	HIGH ALTITUDE					
HENDRICKS Hendricks	AH	24^{00}	07^{00}	A18R H/L $23^{00}/24^{00}$	7	HL
MALESKI	TM	2300	0700	A19D/A22D	8	
JARNECKE	AJ	2300	0700	A21R	8	
KUHLMAN Kuhlman	J.K	23^{00}	07^{00}	B17R	8	
HINSHAW	OB	2400	07^{00}	B16D H/L 2300 - 2400	7	1 H/L
STERNBERG Sternberg	RB	2300	0700	B17H	8	
	EAST					
HOGAN Hogan	IP	2300	0700	B1	8	
BRUCK Bruck	YC	2300	0700	~~B1D~~/A11D	8	
HERMANSON Hermanson	HH	2300	0700	B54R	8	
KING	BK	2300	0700	A7R	8	
	NORTH					
VAUGHN Vaughn	TV	2300	0700	D11D	8	
HENSLEY	HY	2300	0700	D12R	8	
	WEST TERMINAL					
ROWELL Rowell	RL	22^{31}	06^{31}	D20D	8	
SCHOOF Schoof	Gf	23^{00}	07^{00}	D21R	8	
	WEST WING					
BURNS	BT	2250	0650	C24R/C25D	8	
LENTZ Lentz	LZ	2250	0650	D29D	8	
LESIAK	KE	2231	0631	D30R	8	

— EXHIBIT 17 —

DAILY RECORD OF FACILITY OPERATION

PAGE NO.

DATE

CHECKED BY

CHIEF

LOCATION	IDENTIFICATION	TYPE FACILITY	OPERATING POSITION

TIME (GMT)	REMARKS

I CERTIFY that entries above are correct; that all scheduled operations have been accomplished, except as noted, and that all abnormal occurrences and conditions have been recorded.	SIGNATURE (S) OF WATCH SUPERVISOR (S)

FAA Form 7230-4 (2-67) FORMERLY FAA FORM 504

— EXHIBIT 17 (cont.) —

NORTH WING
PERSONNEL LOG

DATE 8-3-81 SHIFT 07-15

SIGNATURE	INITIALS	ON	OFF	DUTIES	HOURS ON DUTY	HOURS ON LEAVE
Adair				AREA SUPERVISOR		
				TEAM SUPERVISOR		
				TEAM SUPERVISOR		
6 Snow				~~[illegible]~~ D50		8AWOL
6 Marszalek				D51		8AWOL
Grow				D51H		8AWOL
Rohlfing				~~DJA – JEN~~ D50H		8AWOL
Daniel				D7 – GRB		[illegible]
Riley						~~[illegible]~~
Larson						8AWOL
Collins				C10A - GRB		8AWOL
				B24 - 27		
				Study		
				Study		
				Study		
				A/L S/L O/T		
Mack	—	—	—	—	~~[illegible]~~	8 A/L
~~Jorgensen~~	~~—~~	~~—~~	~~—~~	—	—	8 A/L
[illegible]						

EXHIBIT 18

DAILY RECORD OF FACILITY OPERATION				PAGE NO. DATE CHECKED BY
LOCATION	IDENTIFICATION	TYPE FACILITY	OPERATING POSITION	CHIEF

TIME (GMT)	REMARKS

I CERTIFY that entries above are correct; that all scheduled operations have been accomplished, except as noted, and that all abnormal occurrences and conditions have been recorded.	SIGNATURE(S) OF WATCH SUPERVISOR(S)

FAA Form 7230-4 ([illegible]) FORMERLY FAA FORM 366

— EXHIBIT 18 (cont.) —